

# **New York State Department of Environmental Conservation**

## **Division of Materials Management**

Bureau of Pest Management

Dulles State Office Building, 7<sup>th</sup> Floor

317 Washington St., Watertown, NY 13601

**Phone:** (315) 785-2614 • **Fax:** (315) 785-2422

**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

July 18, 2011

## **NOTICE OF VIOLATION**

Rhodes' Greenhouses  
Attn: Mr. Gary Rhodes  
PO Box 220  
Belleville, NY 13611

I am contacting you regarding violation(s) of the Environmental Conservation Law (ECL) recently documented by the New York State Department of Environmental Conservation (the Department).

The Department is responsible for the administration and enforcement of laws and regulations pertaining to pesticides in the State of New York, including Articles 15, 33 and 71 of the ECL, and Parts 320-329 of Title 6 of the Official Compilation of Codes, Rules and Regulations of New York State (6 NYCRR).

## **ENFORCEABLE PROVISIONS OF LAW**

### ***Certification:***

1. Section 325.7(d)(2)(ii) states that on-site supervision is required when an individual under the instruction and control of a certified private pesticide applicator applies federally restricted use pesticides.
2. Section 325.7(d)(2)(iv) states that individuals under the supervision of certified private pesticide applicators shall not apply fumigants except when using fumigants classified as general use that are applied to in-place utility poles.

### ***Failure to follow label:***

1. Section 325.2(b) of 6 NYCRR requires that registered pesticides be used only in accordance with label directions or as modified or expanded and approved by the

Department.

***Misbranded pesticides:***

1. Section 33-1301(1)(b) of the ECL prohibits distribution, sale, offer for sale or use within New York State or delivery for transportation or transport of any pesticide unless there is affixed to the outside of the container and the outside package of the retail container, if there be one, a label upon which all required information can be read.

***Unregistered pesticides:***

1. Section 33-0701 of the ECL requires the registration every two years of any pesticide which is used, distributed, sold or offered for sale within New York State or delivered for transportation or transported in intrastate commerce or between points within New York State through any point outside the State.
2. Section 33-1301(1)(a) of the ECL states that it is unlawful for any person to distribute, sell, offer for sale or use within New York State or deliver for transportation or transport in intrastate commerce or between points within New York State through any point outside the State any pesticide which has not been registered pursuant to Article 33 of the ECL.
3. Section 33-1503(4) of the ECL states that whenever any pesticide is seized or quarantined, the destruction and disposition thereof, together with any necessary storage, handling or other incidentals between the time of seizure or quarantine and the destruction and disposition thereof, shall be the responsibility, both financially and otherwise, of the owner, proprietor or custodian of such pesticide; provided, however, that such destruction and disposition shall be carried out only under the direction and immediate supervision of the commissioner or his duly authorized representative.
4. Section 33-1301(10) states that it shall be unlawful for any person to remove or dispose of a seized or quarantined pesticide by sale or otherwise without the commissioner's permission.

**VIOLATIONS DOCUMENTED BY THE DEPARTMENT**

**On June 29th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Rhodes' Greenhouses, was offering for sale four different unregistered pesticide products, a violation of Sections 33-0701 and 33-1301.1(a) of the ECL.**

**On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, applied a federally restricted fumigant without the necessary pesticide applicator certification, a violation of Part 325.7(d)(2)(iv) of 6 NYCRR.**

**On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was**

discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, applied an unregistered pesticide product, a violation of Sections 33-0701 and 33-1301.1(a) of the ECL.

On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, didn't have copies of the labels for each pesticide being used during their use or upon request by the department, a violation of Part 325.2(d) of 6 NYCRR.

On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, didn't follow label directions, a violation of Part 325.2(b) of 6 NYCRR, in that he didn't comply with the Worker Protection Standard, 40 CFR part 170, as required by the Agricultural Use Requirements section on the pesticide's label. More specifically, Rhodes' Greenhouses was found to be in violation of the following sections of 40 CFR part 170:

1. 40 CFR 170.130 requires that all workers must receive pesticide safety training using United States Environmental Protection Agency approved training materials. This training must also be documented.
2. 40 CFR 170.122 requires that specific information on pesticide applications, in the form of written application records be provided at the central location and be available to workers and handlers. Specific information on all pesticide applications, including location of application, product name, EPA registration number, active ingredients, time and date of application, and restricted entry intervals (REI) for each pesticide applied within the past thirty (30) days, must be provided for both general and restricted use products.
3. 40 CFR 170.135 requires employers of agricultural workers and handlers to display a pesticide safety poster in a location designated as the central posting area. This poster must also contain information on emergency medical contacts.
4. 40 CFR 170.150 requires that decontamination sites be provided for workers within 1/4 mile of the work site and for 30 days following the expiration of the REI. Worker sites must have soap, single use towels, and enough water for washing and emergency eye flushing. In addition to these items, handler sites must have enough water for washing entire body in case of an emergency and one clean change of clothing

**PURSUANT TO ECL § 33-1501, YOU ARE HEREBY ADVISED TO CEASE AND DESIST FROM FURTHER VIOLATION OF ANY PROVISION OF THE ECL, AND ANY RULES AND REGULATIONS PROMULGATED PURSUANT THERETO. ANY CONTINUED VIOLATION MAY BE CONSIDERED A WILLFUL OFFENSE WHICH COULD SUBJECT YOU TO CRIMINAL SANCTIONS.**

**PLEASE BE ADVISED THAT the ECL provides for civil and criminal**

penalties of up to \$5000 per violation for the initial violation and \$10,000 per violation for subsequent violation, and/or one year imprisonment for any person who violates any provision of ECL Article 33 or any rule, regulation or order issued there under.

**PLEASE ALSO BE ADVISED THAT** this case file has been forwarded to our regional Office of General Counsel for further enforcement action. Someone from their office will contact you to discuss the violations documented above.

Sincerely,



Robert Freese  
Pesticide Control Specialist I

cc: Peter Taylor  
Randall Young  
Inspection file:

Rhodes' Greenhouses  
7185 NYS Rte 3  
Henderson, NY 13650



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT  
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## INSPECTION REPORT COVER SHEET

Inspection #: <u>101911RFZ01</u>	Name of Person Contacted: <u>Gary Rhodes</u>
Name of Business: <u>Rhodes Greenhouses</u>	Official Position: <u>Owner</u>
Street Address: <u>7185 NYS Rte 3</u>	Post Office Address: <u>PO Box 220</u>
City/State/Zip Code: <u>Henderson, NY 13650</u>	City/Village/Township: <u>Belleville, NY 13611</u>
Telephone Number: <u>(315) 938-5152</u>	County: <u>T Jefferson</u>

Inspector's Initials	Name of Inspection Form	Form Number
RF	Notice of Inspection	NOI
	Pesticide Applicator/Business/Use Inspections	USE
	Worker Protection Standard Inspection	WPS
	Liquid Termiticide Use Checklist	TER
	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
RF	Receipt for Samples	SAM
	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
	Quarantine Order	QRN
RF	Quarantine Order Release <u>(2)</u>	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED

Inspector's Signature: Robert Dwyer Number: RFZ Date: 10/19/11

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initialed by the inspector.

Signature: Gary L. Rhodes Date: 19 Oct 2011

Print Name: GARY L. RHODES



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## INSPECTION REPORT COVER SHEET

Inspection #: <u>062911RFZ01</u>	Name of Person Contacted: <u>Gary Rhodes</u>
Name of Business: <u>Rhodes Greenhouses</u>	Official Position: <u>Owner</u>
Street Address: <u>7185 NYS Rt 3</u>	Post Office Address: <u>PO Box 220</u>
City/State/Zip Code: <u>Henderson NY 13650</u>	City/Village/Township: <u>Belleville NY 13611</u>
Telephone Number: <u>(315) 938-5152</u>	County: <u>Jefferson</u>

Inspector's Initials	Name of Inspection Form	Form Number
<u>RF</u>	Notice of Inspection	NOI
	Pesticide Applicator/Business/Use Inspections	USE
	Worker Protection Standard Inspection	WPS
	Liquid Termiticide Use Checklist	TER
	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
	Receipt for Samples	SAM
<u>RF</u>	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
<u>RF</u>	Quarantine Order <u>(2)</u>	QRN
	Quarantine Order Release	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED

Inspector's Signature: Robert Deese Number: RFZ Date: 6/29/11

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initialed by the inspector.

Signature: M. L. Rhodes Date: 29 June 2011

Print Name: GARY L. RHODES



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## INSPECTION REPORT COVER SHEET

Inspection #: <u>062411 RF201</u>	Name of Person Contacted: <u>Gary Rhodes</u>
Name of Business: <u>Rhodes Greenhouses</u>	Official Position: <u>Owner</u>
Street Address: <u>7185 NYS Rt 3</u>	Post Office Address: <u>PO Box 220</u>
City/State/Zip Code: <u>Henderson, NY 13650</u>	City/Village/Township: <u>Belleville, NY 13611</u>
Telephone Number: <u>(315) 938-5152</u>	County: <u>Jefferson</u>

Inspector's Initials	Name of Inspection Form	Form Number
<u>RF</u>	Notice of Inspection	NOI
<u>RF</u>	Pesticide Applicator/Business/Use Inspections	USE
<u>RF</u>	Worker Protection Standard Inspection	WPS
	Liquid Termiticide Use Checklist	TER
	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
	Receipt for Samples	SAM
	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
	Quarantine Order	QRN
	Quarantine Order Release	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED

Inspector's Signature: Robert Dreese Number: RF2 Date: 6/24/11

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initialed by the inspector.

Signature: Gary L. Rhodes Date: 24 June 2011

Print Name: GARY L. Rhodes



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☒ NOTICE OF INSPECTION

☐ USE/MISUSE INSPECTION

INSPECTION # <b>1019URF201</b>	DATE <b>October 19</b>	TIME <b>10:15</b> <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	REGION <b>6</b>
NAME OF INDIVIDUAL <b>Gary Rhodes</b>		TITLE <b>Owner</b>	
NAME OF FIRM (Note if corporation, partnership, dba, etc) <b>Rhodes Greenhouses</b>			
ADDRESS This is the address of the: <input checked="" type="checkbox"/> INSPECTION SITE <input type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL <b>7185 NYS Rte 3</b>			
CITY / VILLAGE <b>Henderson</b>		STATE <b>NY</b>	ZIP <b>13450</b>
TOWNSHIP	COUNTY <b>Jefferson</b>	PHONE <b>(315) 938-5152</b>	

**REASON FOR INSPECTION**

- ☒ For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale.
- ☒ For the purpose of inspecting and obtaining samples of mandated records.
- ☐ For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations.
- ☐ For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations.
- ☒ Other - **To issue a quarantine release for all the products quarantined on 06/29/11.**

**VIOLATION SUSPECTED**

**CONSENT USE/MISUSE**

Voluntary Consent Necessary to Enter for Inspection and/or Sampling.

- ☐ The undersigned hereby voluntarily consents to an inspection of \_\_\_\_\_ of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.

SIGNATURE

TITLE

DATE

This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).

**INSPECTOR INFORMATION**

NAME <b>Robert Freese</b>	TITLE <b>PCS-1</b>	ID NUMBER <b>RF2</b>	PHONE NUMBER <b>(315) 785-2614</b>
SIGNATURE <b>Robert Freese</b>	OFFICE LOCATION <b>367 Washington St. Wicksburg, NY 13461</b>	ACCOMPANIED BY <b>Nels Magnuson-06C</b>	



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☒ NOTICE OF INSPECTION ☐ USE/MISUSE INSPECTION

INSPECTION # <b>062911RF201</b>	DATE <b>June 29, 2011</b>	TIME <b>1:00</b>	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	REGION <b>6</b>
NAME OF INDIVIDUAL <b>Gary Rhodes</b>		TITLE <b>Owner</b>		
NAME OF FIRM (Note if corporation, partnership, dba, etc) <b>Rhodes Greenhouses</b>				
ADDRESS This is the address of the: <input type="checkbox"/> INSPECTION SITE <input type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL <b>7185 NYS Rt 3</b>				
CITY / VILLAGE <b>Henderson</b>		STATE <b>NY</b>	ZIP <b>13650</b>	
TOWNSHIP	COUNTY <b>T Jefferson</b>	PHONE <b>(315) 938-5152</b>		
<b>REASON FOR INSPECTION</b> <input type="checkbox"/> For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale. <input type="checkbox"/> For the purpose of inspecting and obtaining samples of mandated records. <input type="checkbox"/> For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations. <input type="checkbox"/> For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations. <input checked="" type="checkbox"/> Other - <b>To quarantine any unregistered pesticide products.</b>				
<b>VIOLATION SUSPECTED</b> 				
<b>CONSENT USE/MISUSE</b> Voluntary Consent Necessary to Enter for Inspection and/or Sampling. <input type="checkbox"/> The undersigned hereby voluntarily consents to an inspection of _____ of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.				
SIGNATURE		TITLE	DATE	
This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).				
<b>INSPECTOR INFORMATION</b>				
NAME <b>Robert Freese</b>	TITLE <b>PC-1</b>	ID NUMBER <b>RF2</b>	PHONE NUMBER <b>(315) 785-2614</b>	
SIGNATURE <b>Robert Freese</b>	OFFICE LOCATION <b>317 Washington Waterbury, NY 13601</b>	ACCOMPANIED BY		

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☒ NOTICE OF INSPECTION

☐ USE/MISUSE INSPECTION

INSPECTION # 062411RFZ01	DATE June 24, 2011	TIME 11:15 <input checked="" type="checkbox"/> AM <input type="checkbox"/> PM	REGION 6
NAME OF INDIVIDUAL Gary Rhodes		TITLE Owner	
NAME OF FIRM (Note if corporation, partnership, dba, etc) Rhodes Greenhouses and Garden Center			
ADDRESS This is the address of the: <input checked="" type="checkbox"/> INSPECTION SITE <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL 7185 NYS Rt. 3			
CITY / VILLAGE Henderson		STATE NY	ZIP 13650
TOWNSHIP	COUNTY Jefferson	PHONE (315) 938-5152	

## REASON FOR INSPECTION

- ☒ For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale.
- ☒ For the purpose of inspecting and obtaining samples of mandated records.
- ☒ For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations.
- ☒ For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations.
- ☒ Other - To conduct a WPS inspection.

## VIOLATION SUSPECTED

None

## CONSENT USE/MISUSE

Voluntary Consent Necessary to Enter for Inspection and/or Sampling.

- ☐ The undersigned hereby voluntarily consents to an inspection of \_\_\_\_\_ of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.

SIGNATURE	TITLE	DATE
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This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).

## INSPECTOR INFORMATION

NAME Robert Freeze	TITLE PCS-1	ID NUMBER RF2	PHONE NUMBER (315) 785-2614
SIGNATURE Robert Freeze	OFFICE LOCATION 317 Washington St. Watkinsburg, NY 13601	ACCOMPANIED BY _____	



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# MARKET PLACE / RESTRICTED DEALER RECORDS INSPECTION

INSPECTION NUMBER <b>062911RF201</b>	FIRM <b>Rhodes Greenhouses</b>
CHECK INSPECTION(S) COMPLETED: <input checked="" type="checkbox"/> MARKETPLACE <input type="checkbox"/> RESTRICTED DEALER RECORDS	
*COMMERCIAL PERMIT NO. <b>NA</b>	*EXPIRATION DATE: <b>NA</b>
*CERTIFIED APPLICATOR NAME	*CERTIFICATION NUMBER
*EXPIRATION DATE	*CATEGORIES

LIST PESTICIDES BELOW IN ORDER TO - CHECK REGISTRATION STATUS, REVIEW LABEL REQUIREMENTS, AND/OR CHECK RESTRICTED SALES RECORDS:

PESTICIDE NAME	EPA REG. NUMBER	LABELER	ADDRESS	R
1) Bonide Captan 50% WP Fruit & Ornamental	66330-27-4	Bonide Products Inc.	6301 Sutcliffe Road Oriskany, NY 13424	<input checked="" type="checkbox"/>
2) Bonide Systemic Granules	4-153	Bonide Products Inc.	"	<input type="checkbox"/>
3) Bonide Tick Master	4-407	"	"	<input type="checkbox"/>
4) Green Sweep Weed & Feed 20-0-0	239-2640	Monsanto Co.	P.O. Box 5008 San Ramon, CA 94583-0808	<input type="checkbox"/>
5)				<input type="checkbox"/>
6)				<input type="checkbox"/>
7)				<input type="checkbox"/>

STORAGE, LABELING & RECORDS	SECTION	YES	NO	NA	REMARKS
Packaging in good condition/original containers	33-1301.1(b)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
All pesticides stored and/or displayed away from food and feed	325.2(b)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
*Restricted Pesticides stored in a secure manner	326.11	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
All pesticides properly labeled and legible	33-1301.1(e)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Section 18 / 24(c) labeling and/or supplemental labeling provided	33-1301.1(e)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
*Required records kept for all Restricted Use Pesticide transactions	326.3	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
*Required records kept for at least 2 years	326.3(f)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Sign displayed in accordance with the Neighbor Notification Law	33-1004.1(a)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Quarantine Order issued as a result of this inspection		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	See Quarantine Order form for pesticides in non-compliance
Inventory check made on previous Quarantine Order and/or Release issued		<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Previous Inspection No.:

ADDITIONAL REMARKS

The above pesticide products were found to be unregistered for sale in New York and will be quarantined.

INSPECTOR'S SIGNATURE

*Robert Dreese*

DATE

6/29/11

R = Restricted Use Pesticide

\* Required field for RDR

## PESTICIDE APPLICATOR/BUSINESS/USE INSPECTIONS

INSPECTION NUMBER <b>062411RF201</b>		FIRM/FACILITY/PERSON INTERVIEWED <b>Rhodes Greenhouses / Gary Rhodes</b>		EQUIPMENT TYPE/SIZE <b>hand sprayer</b>	
TYPE OF INSPECTION: [ ] Business/Agency [ ] Applicator [ ] Non-agricultural use [x] Agricultural use		SITE OF INSPECTION <b>7185 NYS RT. 3 Henderson, NY 13650</b>			
BUSINESS REG. NO./EXPIRATION DATE <b>NA</b>		INSURANCE COMPANY/EXPIRATION DATE <b>NA</b>			
APPLICATOR NAME/CERTIFICATION TYPE		CERTIFICATION ID	CATEGORY/EXPIRATION	SUPERVISED BY	
<b>Solene Rhodes Private Applicator</b>		<b>P6839805</b>	<b>24 4/21/11</b>	<b>NA</b>	
<b>Gary Rhodes</b>		<b>none</b>		<b>Solene Rhodes</b>	
DATE/TIME/WEATHER CONDITIONS DURING APPLICATION <b>3/5/11</b>		CROP <b>Geraniums</b>	SITE/SIZE <b>North House 30x48</b>	TARGET PESTS <b>aphids white flies</b>	
PESTICIDE NAME/EPA REG NO.		METHOD OF APPLICATION	CLASSIFICATION	FORMULATION	LABEL RATE OBSERVED RATE
<b>Nicotine Smoke (Tulex Nicotine Fumigant) 1327-41</b>		<b>Fumigant</b>	<b>Restricted</b>	<b>granular</b>	<b>unknown 2 cons</b>
LABEL/EQUIPMENT REQUIREMENTS		REFERENCE SECTION	Yes No NA	APPLICATOR REQUIREMENTS	
Label Rate Followed	325.2(b)			Apprentices Properly Supervised 325.7(d)	
Target Pests on Label	325.2(b)			Apprentices Trained/Documented 325.10(a)	
PPE/Cautionsary Labeling Followed	325.2(b)			Apprentice Variance Approved 325.10(b)	
Preharvest Interval/REI per Label	325.2(b)			I. D. Card in Possession During Use 325.7(a)	
Crop/Area Treated per Label	325.2(b)			Label in Possession During Use 325.2(d)	
Pesticide Containers Properly Labeled	33.1301(1)(b)			Notification Requirements Met 33-0905(5)	
Service Containers Properly Labeled	33.1301(1)(b)			REPORTS/RECORDS 33-1205(1)	
Containers Properly Rinsed and Disposed	325.4(a)			EPA Reg. No.	Yes No NA
Backflow Prevention/Air Gap Present	325.2(c)			Product Name	✓
Proper Stickers on Equipment/Vehicles	325.26			Quantity	✓
Equipment Properly Calibrated				Date Applied	✓
Storage Locked/Containers Secure		✓		Address	✓
Warning Signs Posted		✓		Place of Application	✓
Location of Container Disposal: <b>garbage</b>				Dosage Rate	✓
Location of Pesticide Storage: <b>back shop</b>				Method of Application	✓
Water Source: <b>well</b>				Target Organism/Crop Treated	✓
Pesticide Mixing Area: <b>back shop</b>				Records Kept 3 Years	✓
REMARKS: The label rate for Tulex Nicotine Fumigant, EPA # 1327-41, is found on the supplemental labeling which Mr. Rhodes didn't have. Mr. Rhodes uses M-Pede Insecticide, Marathon (EPA # 432-1374-59807) + Roundup. The label for M-Pede was unreadable.					
INSPECTOR'S SIGNATURE <b>Robert Greene</b>		DATE AND TIME INSPECTED: <b>6/24/11 12:00 PM</b>			



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# WORKER PROTECTION STANDARD INSPECTION

Inspection # <u>062411RFZ01</u>	Date: <u>June 24, 2011</u>	Inspection: <input checked="" type="checkbox"/> Unannounced <input type="checkbox"/> Appointment
Firm/Farm Name <u>Rhodes Greenhouses</u>	Inspection Type: Tier I <input type="checkbox"/> or Tier II <input type="checkbox"/>	
Type of Establishment: (check all applicable): <input type="checkbox"/> Farm <input checked="" type="checkbox"/> Greenhouse <input type="checkbox"/> Nursery <input type="checkbox"/> Family establishment <input type="checkbox"/> Research <input type="checkbox"/> Forest		
Approx. total area of establishment: <u>30,000 sq. ft.</u>	Principal crops: <u>bedding plants</u>	
# of certified applicators with establishment: <u>1</u>	Name of person(s) directing/controlling pesticide use: <u>1</u>	
Who applies pesticides? (check all applicable): <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Employee <input type="checkbox"/> Custom Applicator		
Note: For data in this block, estimates provided by the establishment are sufficient.		
# present at this inspection:	workers <u>3</u>	handlers <u>1</u>
1. # present during last pesticide application:	workers <u>3</u>	handlers <u>1</u>
2. or for the last 30 days: (circle one)	workers <u>3</u>	handlers <u>0</u>

## INFORMATION AT A CENTRAL LOCATION

40 CFR 170.122/135

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- ☐ NA ☒ Y ☐ N Is the approved SAFETY POSTER displayed? 23  
☐ NA ☒ Y ☐ N Is EMERGENCY MEDICAL INFORMATION displayed? (name, address & telephone number) 24  
☐ NA ☒ Y ☐ N Is the site LOCATED where it can be readily seen and read by workers & handlers? 24  
☐ NA ☒ Y ☐ N Are workers & handlers INFORMED of the location and are they allowed ACCESS to the site? 24  
☐ NA ☒ Y ☐ N Does the information remain LEGIBLE while posted? 24  
☐ NA ☒ Y ☐ N Is the following APPLICATION INFORMATION displayed? -Location and Description of the treated area; - Product Name; -EPA REG #; - Active Ingredient(s) of the pesticide; -Time & Date of application; - REI (restricted entry interval) 23

Comments (explain NA): Application Info is not displayed but kept in a file. Emergency phone # is displayed.

## PESTICIDE EXPOSURE INCIDENTS/EMERGENCY ASSISTANCE

40 CFR 170.160

- How are incidents reported for employees who become sick/injured by pesticides? by cell phone  
☐ NA ☒ Y ☐ N Is prompt transportation to emergency medical facility available for employees who become sick/injured by pesticides? 36  
☐ NA ☒ Y ☐ N Is information provided to medical personnel regarding the pesticide to which employees may have been exposed? 36

Who is the person responsible for providing transportation and pesticide information? Gary Rhodes  
☐ Y ☒ N Have there been any pesticide exposure incidents on this farm? If yes, give details:

Comments (explain NA): There haven't been any incidents

## EMPLOYER/CUSTOM APPLICATOR INFORMATION EXCHANGE ☒ NA (no custom applications) 40 CFR 170.124 & 170.224

- ☐ NA ☐ Y ☐ N Does the ag establishment notify the custom applicator regarding the location of treated areas and REIs? 34  
☐ NA ☐ Y ☐ N Does custom applicator notify the ag establishment of required application information before the application? 33

How is the information exchanged? When/with whom?

Inspection # 062411RF201

**PESTICIDE SAFETY TRAINING ASSURANCE**

40 CFR 170.130

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**WORKERS:** (Applies to workers who are NOT certified applicators or trained handlers)

- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that workers have been trained within the last five years? 25
- ☒ NA ☐ Y ☐ N Does Ag Employer ASSURE that workers have been trained *before EARLY ENTRY* activities during an REI? 25
- ☐ NA ☒ Y ☐ N Is the Ag Employer able to VERIFY that the required PESTICIDE SAFETY INFORMATION was provided to workers 26
- ☐ NA ☒ Y ☐ N Is the Ag Employer able to VERIFY that the required PESTICIDE SAFETY INFORMATION was provided to workers before entry into any area on an ag establishment where WPS pesticides have been applied within the last 30 days? 25/26
- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that workers have received the required ADDITIONAL TRAINING before the sixth day of entry into any area on an ag establishment where WPS pesticides have been applied within the last 30 days? 25/26

**HANDLERS:** (Applies to handlers who are NOT certified applicators or certified crop advisers) 40 CFR 170.230

- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that handlers have been trained within the last five years? 25/26
- ☐ NA ☒ Y ☐ N Does Ag Employer ASSURE that handlers have been trained before performing any handling task? 25/26

How is training verified for both workers and handlers? It's not verified.

Comments (explain NA): Mr. Rhodes used to be certified a long time ago.

**PESTICIDE SAFETY TRAINING PROGRAM** ☐ NA (if workers trained elsewhere) 40 CFR 170.130/230

- ☒ NA ☐ Y ☐ N **WORKERS & HANDLERS:** Is the information presented in a manner that the workers & handlers can understand (such as through a translator & using nontechnical terms & presenter answers questions)? 27
- ☒ NA ☐ Y ☐ N **WORKERS:** Does the PESTICIDE SAFETY INFORMATION meet the criteria listed in 170.130(c)? 26
- ☒ NA ☐ Y ☐ N **WORKERS:** Does the content of the ADDITIONAL TRAINING materials meet the criteria listed in 170.130(d)(4)? 103
- ☒ NA ☐ Y ☐ N Is trainer qualified to train WORKERS? (certified applicator or authorized by DEC) 26
- ☒ NA ☐ Y ☐ N **HANDLERS:** Does the content of the training materials meet the criteria listed in 170.230(c)(4)? 104
- ☒ NA ☐ Y ☐ N Is the trainer qualified to train HANDLERS? (certified applicator or authorized by DEC) 26

Who trains workers/handlers? Gary Rhodes When/how often? yearly

Comments (explain NA): Mr. Rhodes informs his workers of what he does but does not use approved training materials.

**DECONTAMINATION SITES**

The employer must adhere to the following decontamination requirements for **WORKERS and HANDLERS:** 40 CFR 170.112/150/250

- ☐ NA ☒ Y ☐ N Do decontamination sites have soap, single-use towels, and enough water for washing & emergency eye flushing? 29-31
- ☐ NA ☒ Y ☐ N Is the decontamination water of a quality & temperature as required? 29
- ☐ NA ☒ Y ☐ N Is one pint of eye flush water immediately available to handlers using pesticides requiring protective eye wear and to early entry workers when working in areas treated with pesticides requiring protective eye wear for early entry? 31/68
- ☐ NA ☒ Y ☐ N Is the decontamination site within 1/4 mile of the work site and out of areas being treated or under REI? 30/31
- ☐ NA ☒ Y ☐ N Are decontamination sites provided for workers entering treated areas until 30 days following expiration of the REI? 29
- ☐ NA ☒ Y ☐ N (Exception: Pesticides with a four-hour REI require decontamination site for only seven days.) 67/68
- ☐ NA ☒ Y ☐ N Are decontamination sites provided for early entry workers during and after early entry? 67/68

The employer must adhere to the following decontamination requirements for **HANDLERS:** 40 CFR 170.250

- ☐ NA ☒ Y ☐ N Is enough water provided to handlers for washing the entire body in case of an emergency? 30
- ☐ NA ☒ Y ☐ N Is one clean change of clothing provided to handlers for use in an emergency? 30/31
- ☐ NA ☒ Y ☐ N Are decontamination supplies located at the mix/load site? 30
- ☒ NA ☐ Y ☐ N Are decontamination supplies for PILOTS kept in the airplane or at the aircraft loading site? 31
- ☐ NA ☒ Y ☐ N Are handler decontamination supplies kept out of treated areas unless they are in enclosed containers? 31
- ☐ NA ☒ Y ☐ N Are decontamination supplies located where handlers remove PPE for washing thoroughly after handling activities? 31

Comments (explain NA): Mr. Rhodes cleans up at home next door

Inspection # 062411RF201

**ADDITIONAL DUTIES FOR WORKER EMPLOYERS**

**40 CFR 170.110**

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**RESTRICTIONS DURING APPLICATIONS**

- NA Y N Are workers prohibited in treated areas during application and until REIs have expired? 45  
NA Y N Are workers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 51/52  
NA Y N Are workers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 53-55

**NOTICE OF APPLICATIONS TO WORKERS**

**40 CFR 170.120**

- NA Y N Are all GREENHOUSE applications posted with WPS warning signs? 42  
NA Y N Are workers given BOTH oral and posted notification when required by the pesticide label? 41-44  
NA Y N Are workers given notification of applications (EITHER orally or posted) for other applications? 41-44  
NA Y N Are workers told which method will be routinely used at this firm (oral or posted notification)? - circle one 41

Who notifies workers? Gary Rhodes

- NA Y N Have any early entry activities occurred?  
NA Y N Were workers informed of label restrictions re: early entry? - yes thru postings

Posted Warning Signs NA for all

- NA Y N Does the employer use the approved WPS warning signs for posted notification? 42/43  
NA Y N Are the signs posted at all entrances of worker entry to the treated area? 42  
NA Y N Are the signs put up no sooner than 24 hours prior to application? 43  
NA Y N Are the signs removed within three days after the end of the REI? 43  
NA Y N Are the signs posted along the border of any labor camp adjacent to the treated area? 42

Oral Warnings NA for all

- NA Y N Are oral warnings given in a language (s) understood by workers? 44  
NA Y N Do oral warnings include: 1) location & description of treated area; 2) REI; 3) instructions not to enter during the REI? 44

Comments (explain NA): Above

**ADDITIONAL DUTIES FOR HANDLER EMPLOYERS**

**APPLICATION RESTRICTIONS & MONITORING**

NA if no handlers employed **40 CFR 170.210**

- NA Y N \*Do both the employer & the handler assure that no pesticide is applied (either directly or through drift) so as to contact anyone other than trained and PPE-equipped handlers: 73  
How is this verified?  
NA Y N Are handlers monitored visually or by voice every two hours when handling SKULL & CROSSBONES pesticides? 73  
NA Y N Does the handler have a continuous visual or voice contact with another trained and PPE-equipped handler when handling a FUMIGANT in a GREENHOUSE? 73/74

**SPECIFIC INSTRUCTIONS FOR HANDLERS**

NA if no handlers employed **40 CFR 170.232**

- NA Y N Does the employer assure that handlers read the label or are informed (in a manner they can understand) about the label requirements for safe use before performing any handling activity? 75  
NA Y N Does the handler have access to the product labeling during handling activities? 75

**SAFE OPERATION OF EQUIPMENT**

NA if no handlers employed **40 CFR 170.234**

- NA Y N Is the handler instructed in the safe operation of handling equipment before it is used? By whom? 75  
NA Y N Is handling equipment inspected and repaired before each day of use? 77  
NA Y N Does the employer assure that only trained and PPE-equipped handlers repair, clean or adjust any handling equipment that contains pesticides or pesticide residues? 77

Comments (explain NA): Mr. Rhodes uses a ready to use fumigant and doesn't stay on the greenhouse during application

**PERSONAL PROTECTIVE EQUIPMENT REQUIREMENTS FOR HANDLERS/EARLY ENTRY WORKERS****40 CFR 170.112/240**

- NA Y N Does the employer provide the handler/early entry workers with the appropriate PPE in clean and operating condition? 79
- NA Y N Does the employer assure that instruction on use and cleaning of PPE is given and that it is worn and used correctly? 79
- Who gives instructions and assures use of PPE? self instructed
- NA Y N Does the employer assure that PPE is inspected, cleaned, stored properly & repaired or replaced before each day of use? 79
- NA Y N Does the employer assure that filters are replaced on respirators when required? 80
- NA Y N Do handlers/early entry workers have a clean place to store personal clothing, put on PPE and remove PPE after use? 79
- Where is it located? Shop
- NA Y N Is contaminated PPE disposed of properly? 79
- NA Y N Does the employer take appropriate measures to prevent heat-related illness for handlers/early entry workers using PPE? 79
- NA Y N Have handlers refused to wear proper PPE?

From labels of agricultural pesticides documented in an accompanying AUO inspection, list the following (for up to 4 products):

	Product Name	REI	PPE
1			
2			
3			
4			

If the label for any of the above products does not include agricultural use requirements - state so above.

Comments (explain NA): Labels not available

**WORKER AND HANDLER INTERVIEWS**

- Y N Were any workers or handlers interviewed? (circle which were) If no for either, explain why an interview was not conducted.

**FAMILY ESTABLISHMENTS****40 CFR 170.104/110/112/124/224/240**

- NA Y N Are employees only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, sisters? 91
- If NO, skip this section.
- NA Y N Are non-handlers prohibited in treated areas during application and until REIs have expired? 92
- NA Y N Are non-handlers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 92
- NA Y N Are non-handlers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 92
- NA Y N Are early entry workers prohibited in treated areas during the first four hours after application? 93
- NA Y N Are early entry workers limited to one hour of work in a 24-hour period in treated areas during the REI? 93
- NA Y N Are early entry workers who perform irrigation and limited contact activities limited to eight hours of work in a 24-hour period? 93
- NA Y N Is the correct PPE for early entry PROVIDED for early entry activities at this firm? 93
- NA Y N Does the handler at this firm wear the label-specified PPE during handling tasks? 92
- NA Y N Is the label-specified PPE for handling activities at this firm PROVIDED in clean and operating condition? 92
- NA Y N Does this establishment notify commercial handlers regarding location of treated areas and REIs on the establishment? 92
- NA Y N Do commercial handlers notify this establishment of required application information before application takes place? 92

Comments (explain NA):

Additional Comments:

Print name of inspector <u>Robert Freese</u>	Print name of person interviewed <u>Gary L. Rhodes</u>
Signature of inspector <u>Robert Freese</u>	Signature of person interviewed <u>Gary L. Rhodes</u>

New York State Department of Environmental Conservation

WORKER PROTECTION STANDARD  
AGRICULTURAL WORKER INTERVIEW QUESTIONNAIRE - SHORT VERSION

Inspection # (if interview related to an inspection):	062411RF201
Name of Establishment:	Rhodes Greenhouses
Date of Interview:	6/24/11
# of Workers Interviewed:	1
Were Workers accompanied by employers during interview?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Interview Conducted	<input checked="" type="checkbox"/> onsite <input type="checkbox"/> offsite

**PESTICIDE SAFETY TRAINING**

1. Did you receive pesticide safety training? ☐ Yes ☒ No

If yes, what type of training did you receive?

☐ movie ☐ flip chart (bring a picture of a flip chart) ☐ lecture ☐ handbook

2. Was the training in your native language? ☐ Yes ☐ No

3. Where did you receive the training? \_\_\_\_\_

4. When did you receive the training? ☐ During work ☐ At lunch ☐ After work?

5. Was an interpreter available during the training? ☐ Yes ☐ No

6. Do you know who trained you? ☐ Yes ☐ No  
If yes, who? \_\_\_\_\_

7. When you were trained, were you taught about how to wear special clothes (PPE) such as gloves, boots, coveralls, mask? ☐ Yes ☐ No

8. When you were trained, were you taught about heat stress (eg. how to know when you've been in the heat for too long, how to avoid heat stress or what to do if you feel sick from it)? ☐ Yes ☐ No

9. (Show sample worker ID card) Were you given a card like this to show that you were trained?  
☐ Yes ☐ No

10. (Show the safety poster) Where is the safety poster located? no poster posted

11. (Show an example of application records) Has anyone ever showed you where these records are kept?  
☐ Yes ☒ No If yes, where are they located? \_\_\_\_\_

## NOTIFICATION

12. Do you know where the signs are posted about pesticides that have been used recently?  
☐ Yes ☒ No

If yes, where? \_\_\_\_\_

13. Are you told about areas that have been treated with pesticides? ☒ Yes ☐ No

How are you told? ☒ Signs ☒ Oral warning ☐ Both

14. Who tells you when you get oral warnings? Gary Rhodes

Is it the same person that posts the signs? ☒ Yes ☐ No

When do they post them? before application

15. Are signs and oral warnings in your native language? ☒ Yes ☐ No  
(Inspector note how warnings are communicated to non-English speaking workers: \_\_\_\_\_)

16. (Show warning REI sign.) Do you understand what this sign means? ☒ Yes ☐ No

If yes, do you pay attention to the warning signs and not enter or cross the fields? ☐ Yes ☐ No

17. Are you told when to stay out of treated areas? ☒ Yes ☐ No

18. Are the labels for the pesticides available for you to read? ☐ Yes ☒ No

A. Are the labels in a language you can understand? ☐ Yes ☐ No

B. Where is this information? \_\_\_\_\_

C. Is this information always available to you? ☐ Yes ☐ No

## DECONTAMINATION SUPPLIES

19. Is there yes water yes paper towels yes soap, available all day? If so, where? restroom

Is this location more than 1/4 mile from the work site? ☐ Yes ☒ No (Inspector verify, if worker does not know.)

**EARLY ENTRY**

20. Have you ever entered a field or an area of a greenhouse soon after you saw a pesticide being sprayed or were you ever told to enter such an area soon after a pesticide was used? ☒ Yes ☐ No

A. If yes, were you given special clothing to wear? ☐ Yes ☒ No

B. If you did enter such an area, why? Normal activities

**HANDLER TASKS**

21. In the past year, have you ever worked with pesticides to do any of the following?

<input checked="" type="checkbox"/> Y/N	mixing pesticides	adding to pesticide sprayers	applying pesticides to crops	repair or clean a pesticide sprayer	other activity (briefly describe)
Yes					
No	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

If yes, were you trained in doing that work before you did it? ☐ Yes ☐ No NA

**EXPOSURE INCIDENTS**

22. Have you ever felt as though pesticides/poisons have made you sick after working in the fields? ☐ Yes ☒ No

If yes, what were your symptoms? \_\_\_\_\_

23. Were you ever directly sprayed/dusted by pesticides? ☐ Yes ☒ No

If yes, approximately when and how did this happen? \_\_\_\_\_

24. Do you take pesticide containers home with you? ☐ Yes ☒ No

A. If yes, what do you use them for? \_\_\_\_\_

B. Are chemicals ever in the containers? ☐ Yes ☐ No

**EMERGENCY ASSISTANCE**

25. Do you know where to go on your farm/greenhouse to get information about the closest hospitals/clinics (facility's name, phone number, address)? ☐ Yes ☒ No

A. Where is the information? \_\_\_\_\_

B. Is this information always available? ☐ Yes ☐ No

26. Do you know who to contact on the farm/greenhouse if you have a medical emergency while working? ☒ Yes ☐ No

27. Do you know who would take you to the hospital/clinic if you were sick from pesticides? ☒ Yes ☐ No

28. How do you or the employer report pesticide-related illnesses? tell Gary

**RETALIATION**

29. Have you ever been told to do something with pesticides on the farm (greenhouse, etc) that you thought you should not do? ☐ Yes ☒ No

30. Are you always able to do what is needed, like wear special clothing or know about pesticides used, without the employer stopping you from doing those things? ☒ Yes ☐ No

31. Have you ever complained about something relating to pesticides and your work at the farm/greenhouse and been threatened to be fired? ☐ Yes ☒ No

## QUARANTINE ORDER

<b>CONDITIONAL QUARANTINE RELEASE</b>	
<p>You are hereby granted permission to return those pesticides that are <i>initialed by the inspector as conditionally released</i> to the supplier or manufacturer. Proof in the form of _____ must be submitted <i>within 15 business days from the signing of this form</i> to the inspector's attention at this address: NYSDEC, _____</p> <p><b>Failure to provide the required documentation is a violation Article 33, Section 33-1301 (10).</b></p>	
INSPECTOR'S SIGNATURE _____	DATE _____
I agree to comply with the terms of this conditional release.	
SIGNED _____	DATE _____
TITLE _____	

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT  
www.dec.state.ny.us



## QUARANTINE ORDER

INSPECTION # <b>062911RF201</b>	DATE <b>June 29, 2011</b>	REGION <b>6</b>	
TO <b>Rhodes Greenhouses</b>			
ADDRESS <b>7185 NYS Rt 3</b>			
CITY <b>Henderson</b>	COUNTY <b>Jefferson</b>	STATE <b>NY</b> ZIP <b>13650</b>	
OWNER, CUSTODIAN, OR VENDOR OF THAT CERTAIN LOT OF PESTICIDES MARKED OR DESCRIBED AS FOLLOWS:			
Conditional Release Granted (Inspector Initial)	Product Name	EPA Number	Quantity
	<b>DDVP Fumigator</b>	<b>1327-36</b>	<b>8 - 5.1oz cans</b>
	<b>Fulcrum Nicotine Fumigator</b>	<b>1327-41</b>	<b>1 - 6oz can</b>
	<b>Floral Plant Growth Regulator</b>	<b>264-263-AA-829</b>	<b>1 - 1qt bottle</b>
	<b>Benlate</b>	<b>no label</b>	<b>1 jar</b>
	<b>"</b>	<b>"</b>	<b>1 bag</b>
	<b>Cyclozel</b>	<b>241-74-AA</b>	<b>1 - 1qt bottle</b>
	<b>Ortho Bug &amp; Gon Garden Sucker</b>	<b>1021-1758-239</b>	<b>1 - 32oz bottle</b>
	<b>Triflorine EC</b>	<b>646 64746-1-59639</b>	<b>1 - 1qt bottle</b>
	<b>Rose Rx</b>	<b>4-309</b>	<b>1 - 32oz bottle</b>
LOCATION OF QUARANTINED ITEMS: <b>Back Shop at 7185 NYS Rt 3, Henderson, NY 13650</b>			
You are hereby notified that the above described pesticide(s), upon inspection or test is found to be in violation of provisions of the Environmental Conservation Law or the rules and regulations promulgated thereunder in the following respect: <b>ECL 33-1301.1(a)</b>			
YOU ARE HEREBY DIRECTED AND ORDERED, in accordance with the provisions of the Environmental Conservation Law (Article 33, Section 33-1301) from and after the time of service upon you of this order, to stop and refrain from further sale, use, disposition and movement of said pesticide or any part thereof until this order shall have been withdrawn by the inspector, upon evidence that the law or rules and regulations promulgated thereunder has been complied with. IT IS UNLAWFUL FOR ANY PERSON TO MOVE OR ALLOW TO BE REMOVED OR OTHERWISE HANDLE OR DISPOSE OF ANY PESTICIDE HELD UNDER A QUARANTINE ORDER OR TAGS ATTACHED THERETO EXCEPT WITH THE WRITTEN PERMISSION OF THE INSPECTOR AND FOR THE PURPOSE SPECIFIED THEREIN.			
ISSUING INSPECTOR'S SIGNATURE <b>Robert Freese</b>		INSPECTOR'S NAME <b>Robert Freese</b>	INSPECTOR'S ID NUMBER <b>RF2</b>
I HEREBY ACCEPT SERVICE OF THE ABOVE ORDER		TITLE	
this	day of	2	SIGNED

CONDITIONAL QUARANTINE RELEASE	
You are hereby granted permission to return those pesticides that are <b>initialed by the Inspector as conditionally released</b> to the supplier or manufacturer. Proof in the form of _____ must be submitted <b>within 15 business days from the signing of this form</b> to the inspector's attention at this address: NYSDEC, <b>Failure to provide the required documentation is a violation Article 33, Section 33-1301 (10).</b>	
INSPECTOR'S SIGNATURE	DATE
I agree to comply with the terms of this conditional release.	DATE
SIGNED _____	TITLE _____

**QUARANTINE ORDER RELEASE**

[illegible]

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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## QUARANTINE ORDER RELEASE

INSPECTION # <b>1019URF201</b>	ORIGINAL QUARANTINE ORDER INSPECTION # <b>0629URF201</b>	DATE <b>10/19/11</b>	REGION <b>6</b>
TO <b>Rhodes Greenhouses</b>			
ADDRESS <b>7185 NYS Rte 3</b>			
CITY <b>Henderson</b>	COUNTY <b>Jefferson</b>	STATE <b>NY</b>	ZIP <b>13650</b>
OWNER, CUSTODIAN, OR VENDOR OF THAT CERTAIN LOT OF PESTICIDES MARKED OR DESCRIBED AS FOLLOWS:			
Product Name	EPA Number	Quantity	
<b>DDVP Fumigator</b>	<b>1327-36</b>	<b>8 - 5.1oz cans</b>	
<b>Eulex Nicotine Fumigator</b>	<b>1327-41</b>	<b>1 - 6oz can</b>	
<b>Floral Plant Growth Regulator</b>	<b>264-263</b>	<b>1 - 1qt bottle</b>	
<b>Benlate</b>	<b>no label</b>	<b>1 jar</b>	
<b>Benlate</b>	<b>no label</b>	<b>1 bag</b>	
<b>Cyclozel</b>	<b>241-74</b>	<b>1 - 1qt bottle</b>	
<b>Ortho Bug B Gon Garden + Landscape</b>	<b>1021-1758-239</b>	<b>1 - 32oz bottle</b>	
<b>Tri Fluorine EC</b>	<b>64746-1-59439</b>	<b>1 - 1qt bottle</b>	
<b>Rose Rx</b>	<b>4-309</b>	<b>1 - 32oz bottle</b>	
LOCATION OF QUARANTINED ITEMS <b>Back of General Store</b>			
YOU ARE HEREBY NOTIFIED THAT THE ABOVE LISTED QUARANTINED MATERIAL IS RELEASED FROM QUARANTINE FOR THE SPECIFIC PURPOSE IDENTIFIED BELOW:			
<input type="checkbox"/> <b>Shipment back to the supplier/manufacture</b> IMPORTANT - obtain name and signature of shipper at time material is shipped. Provide this information here: Shipping Company _____ DATE _____ SIGNATURE OF SHIPPING COMPANY'S REPRESENTATIVE _____ REPRESENTATIVE'S NAME _____ Upon shipment and obtaining the above information, return this form immediately to the inspector at this address: NYSDEC, _____			
<input checked="" type="checkbox"/> <b>Disposal</b> <b>Products are to be picked up by Safety Klean Systems, Inc.</b>			
<input type="checkbox"/> <b>Other</b> _____			
<b>Robert Freese</b> INSPECTOR'S SIGNATURE		<b>RF2</b> INSPECTOR'S ID NUMBER	
<b>I HEREBY ACCEPT THIS RELEASE</b> Signed <b>By Rhodes</b>		Title <b>Owner</b> Date <b>19 Oct 2011</b>	



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF SOLID AND HAZARDOUS MATERIALS • BUREAU OF PESTICIDES MANAGEMENT  
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# RECEIPT FOR SAMPLES

INSPECTION # <b>10194RFZ01</b>		DATE <b>October 19, 2011</b>		REGION <b>6</b>	
NAME OF INDIVIDUAL <b>Gary Rhodes</b>			TITLE <b>Owner</b>		
ADDRESS <b>7185 NYS Rte 3</b>					
CITY / VILLAGE <b>Henderson</b>			STATE <b>NY</b>		ZIP <b>13650</b>
SAMPLE NUMBERS <b>116008</b>					
<p>SAMPLES COLLECTED (Describe fully. List: ID number assigned to sample and descriptive information of the sample such as Registration, Lot, Batch, Serial Numbers and other positive identification.) The following pesticides, pesticide devices, and/or environmental samples were collected under the authority granted by Article 33 and §15-0313 of Article 15 of the Environmental Conservation Law relating to pesticides, and receipt is hereby acknowledged.</p> <p>1) Photocopy of a proposal from Safety Kleen for waste disposal, proposal number 92493.</p> <p>2) Ten photographs of the quarantined pesticide products that were found to be offered for sale on 6/29/11.</p>					
<input type="checkbox"/> Acknowledgment of Producer/Registrant - The undersigned acknowledges that the samples shown above were obtained from pesticides or devices that were packaged, labeled and released for shipment.					
SIGNATURE (Owner, Operator or Agent) <b>[Signature]</b>			TITLE (Owner, Operator or Agent) <b>Owner</b>		
<input type="checkbox"/> DUPLICATE SAMPLES REQUESTED AND PROVIDED		<input type="checkbox"/> DUPLICATE SAMPLES NOT REQUESTED		SAMPLES WERE <input type="checkbox"/> PURCHASED <input checked="" type="checkbox"/> RECEIVED, NO CHARGE <input type="checkbox"/> BORROWED	
AMOUNT PAID FOR SAMPLES		<input type="checkbox"/> CASH <input type="checkbox"/> VOUCHER		<input type="checkbox"/> TO BE BILLED	
INSPECTOR/COLLECTOR INFORMATION					
NAME <b>Robert Freese</b>		TITLE <b>PLS-1</b>		ID NUMBER <b>RFZ</b>	
SIGNATURE <b>Robert Freese</b>					

315-455-2457

Sample # 116008(1)

4 pages



October 7, 2011

Bill To:

Rhodes Greenhouses  
7185 State Route 3  
Henderson, NY 13650

Service Location:

Rhodes Greenhouses  
7185 State Route 3  
Henderson, NY 13650

Re: **Proposal for Total Project Management**  
Proposal Number: 92493

Safety-Kleen is committed to providing the best in environmental services and is pleased to provide Rhodes Greenhouses, ("the customer") with a proposal for the services described below as part of our full service Total Project Management Program:

• **LABOR**

All labor costs for the segregation, classification, and packaging of the waste materials by experienced personnel in accordance with all DOT, EPA and State regulations.

• **MATERIALS AND FEES**

All fees, applicable taxes and material costs for the proper packaging of the wastes for shipment by highway including drums, packing media, DOT and EPA labels and personal protective equipment.

• **TRANSPORTATION**

Transportation of all packaged wastes by a fully licensed and insured waste transporter, from your facility to the end disposal site.

• **DISPOSAL**

Proper treatment and disposal of all wastes at an authorized disposal facility.

• **PAPERWORK**

If necessary, a completed Hazardous Waste Manifest and Land Disposal Restriction Form for your signature at the time of shipment.

This proposal shall replace any prior oral or written proposal provided by Safety-Kleen and shall serve to memorialize the mutual understanding of our roles and responsibilities related to this proposal and the services provided. This proposal is not to be considered as a fixed price, but a project estimate, based on the Scope of Work, approximate chemical quantities and descriptions of the inventory provided by the Customer. This proposal is subject to the approval of Safety-Kleen's credit department. If actual costs exceed this estimate due to an increased Scope of Work, the Customer will be notified of the revised costs and will be invoiced for the actual work completed.

A handwritten signature in cursive script, appearing to read 'J. J. Rhodes'.



## Safety-Kleen Proposal

October 7, 2011  
Proposal Number: 92493

### The Scope of Work and breakdown of the costs associated with this proposal as follows:

Safety-Kleen Systems, Inc. will provide equipment, labor, and materials to lab pack, transport, and dispose of a supplied inventory of unuseable pesticides. Any additional items added to this inventory may incur additional disposal costs.

This quote assumes;

- Easy access to materials for equipment and personnel.
- All materials will be accepted for disposal at the end facility.

Item Description				
Lab pack, transport, and dispose of unusable pesticides.	1.00	Project	\$1,156.67	\$1,156.67
Taxes				
NYS taxes - 7 3/4%	1.00	Project	\$90.00	\$90.00

Estimated Project Total = \$1,246.67

All items must be shipped in DOT approved shipping containers. Applicable taxes or similar assessments are not included in the Prices and will be billed separately on Customer's invoices. In addition to any other terms herein, this proposal letter is subject to the following Terms and Conditions and must be executed by the Customer prior to Safety-Kleen beginning any work.

October 7, 2011

Proposal Number: 92493

## Terms and Conditions

### Waste Disposal Services

- 1) Price is valid for thirty (30) days from the date of this proposal letter.
- 2) Customer agrees to pay the Prices for the Services and agrees that payments hereunder are due upon Customer's receipt of an Invoice. Amounts due on invoices that are not paid within 30 days are subject to an interest charge equal to the lesser of 1.5% per month (18% per annum) or the maximum rate allowed by law.
- 3) Customer shall be responsible for any additional costs incurred as a result of packaging and disposal of additional items or quantities not listed on the original inventory.
- 4) All drummed waste materials are packaged in drums that meet current DOT/UN specifications and are in good condition suitable for transportation by highway. Repackaging or over packing of drums will result in additional costs for labor and Materials, payment for which is the responsibility of the Customer.
- 5) Safety-Kleen's employees or agents may refuse to package and ship any materials that are determined to contain pathological agents, biological wastes, PCB's, dioxins, radioactive wastes, explosives or that possess other hazards that make the waste unsafe for handling or shipping.
- 6) If Customer has a valid and current Universal Services Agreement or Master Services Agreement on file with Safety-Kleen, the terms and conditions of said Agreement shall control in the event there is any conflict with the terms and conditions of this price quotation.
- 7) Customer will submit a separate description ("Material Profile") for each waste material tendered or delivered by Customer to Safety-Kleen ("Waste"). Customer, upon request by Safety-Kleen, will submit with the Material Profile a sample of the Waste described in the Material Profile. Customer acknowledges and agrees that Safety-Kleen bases its testing, evaluation, collection, handling, and processing procedures on the description of the Waste contained in the Material Profile. If Customer is responsible for packaging and marking the Waste, the Waste will be described, coded, packaged and labeled in accordance with all applicable laws, will conform to the Waste Profile provided to Safety-Kleen and will be produced as described in the Waste Profile. Customer agrees not to mix the Waste with any other materials (including, without limitation, materials containing PCBs) or otherwise alter the characteristics of the Waste. Customer will inform Safety-Kleen of any process changes that may alter the characteristics of the Waste.
- 8) Provided the Waste Material is as described in the applicable Waste Description and the Waste Material is properly packaged, coded, marked and labeled, title, risk of loss and all other incidents of ownership with respect to the Waste Material will be transferred from Customer to Safety-Kleen at either (i) the time Safety-Kleen takes possession of, signs for, and removes the Waste Material from Customer's location or (ii) the time Customer's Waste Material is delivered to Safety-Kleen. Any marketable or usable material Safety-Kleen may recover from the Waste Material shall be the sole property of Safety-Kleen.
- 9) Waste Material will be considered nonconforming waste ("Nonconforming Waste") if it fails to conform to the applicable Waste Description or if any packaging and/or marking provided by Customer is not in accordance with applicable Laws and requirements provided in advance to Customer by Safety-Kleen. In the event Waste Material is determined to be Nonconforming Waste, Safety-Kleen may reject or revoke its acceptance of the Waste Material. The rejection or revocation of acceptance shall be effective immediately upon receipt of notice, verbal or written, by Customer or its agent. Customer and Safety-Kleen will have 7 days to seek an alternative manner of disposition of the Nonconforming Waste, unless it is necessary by reason of law, facility permit or facility operating procedure to move the Nonconforming Waste in less than 7 days. If Customer and Safety-Kleen cannot agree on an alternative manner of disposition within the relevant period, Safety-Kleen shall either return the Nonconforming Waste to Customer or unilaterally determine and arrange for an alternative, lawful manner of disposition. Customer shall pay Safety-Kleen its reasonable expenses and charges for Services provided in relation to such Nonconforming Waste, including analytical work, transportation, storage, repair, replacement, decontamination and cleaning of applicable equipment and Nonconforming Waste charges.
- 10) Safety-Kleen agrees to indemnify, hold harmless and defend Customer, its directors, officers, employees and agents from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement and reasonable lawyers' fees, consultant or other professional fees and the reasonable costs of investigation, containment and cleanup and any remedial actions required by law, regulation or order, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or comparable state superfund law (collectively referred to as "Damages"), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of Laws, to the extent that such Damages were caused by: (i) Safety-Kleen's breach of any term or provision of this Agreement; (ii) the failure of any representation or warranty of Safety-Kleen to be true, accurate and complete; or (iii) any negligent act or omission or willful misconduct of Safety-Kleen or its employees or agents.



October 7, 2011

Proposal Number: 92493

- 11) Customer agrees to indemnify, hold harmless and defend Safety-Kleen, its directors, officers, employees and agents from and against any and all Damages, which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of Laws, to the extent that such Damages were caused by: (i) Customer's breach of any term or provision of this Agreement; (ii) the failure of any representation or warranty of Customer to be true, accurate and complete; or (iii) any negligent act or omission or willful misconduct of Customer or its employees or agents.
- 12) In no event shall either party be liable for any special, indirect, incidental, punitive or consequential damages, whether based in contract, warranty, indemnity or tort, negligence or strict liability.
- 13) Except as provided to Safety-Kleen, Customer holds clear title to all Waste to be transferred hereunder and it is under no legal restraint or order which would prohibit transfer of possession or title to such Waste to Safety-Kleen.
- 14) No delay or failure in performance by either party hereto, except for the payment for Services previously performed, shall constitute default hereunder or give rise to any claim for damages, if, and to the extent, such delay or failure is caused by an occurrence beyond the reasonable control and without the fault or negligence of the party affected and which said party is unable to prevent or provide against by exercise of reasonable diligence, including, but not limited to, acts of God or the public enemy, unavoidable casualties, fires or other catastrophes, strikes or any other considered acts of employees.
- 15) Materials quoted on a weight basis may be subject to minimum weight charges.
- 16) Safety-Kleen has the right to refuse any hazardous drum that exceeds its legal DOT rating, any non-hazardous drum exceeding 950 pounds, or any pallet exceeding 2,400 pounds.
- 17) Except as specified in Section 6 above, the terms and conditions herein supersede and replace any previous or existing agreement, quotation for services, scope of work, purchase order or understanding, written or oral, between the parties.
- 18) All projects over \$2,500 require a Purchase Order for the amount of service prior to Safety-Kleen scheduling the service.
- Sincerely,

Tamara Capenos  
315-456-9908  
Safety-Kleen Systems, Inc.

Your signature below indicates your acceptance of the pricing, terms and conditions set forth in this proposal. Any changes in the Scope of Work or this proposal must be in writing and signed by Safety-Kleen and Customer. Final acceptance by Safety-Kleen, however, shall be subject to final credit approval.

RHODES Greenhouses  
Company Name

GARY L. RHODES  
Name & Title

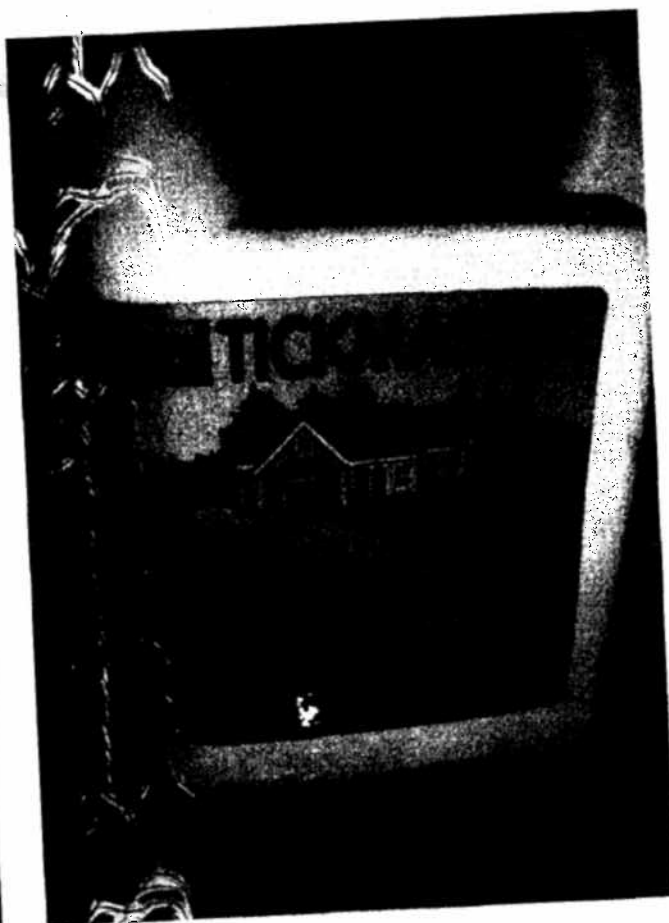
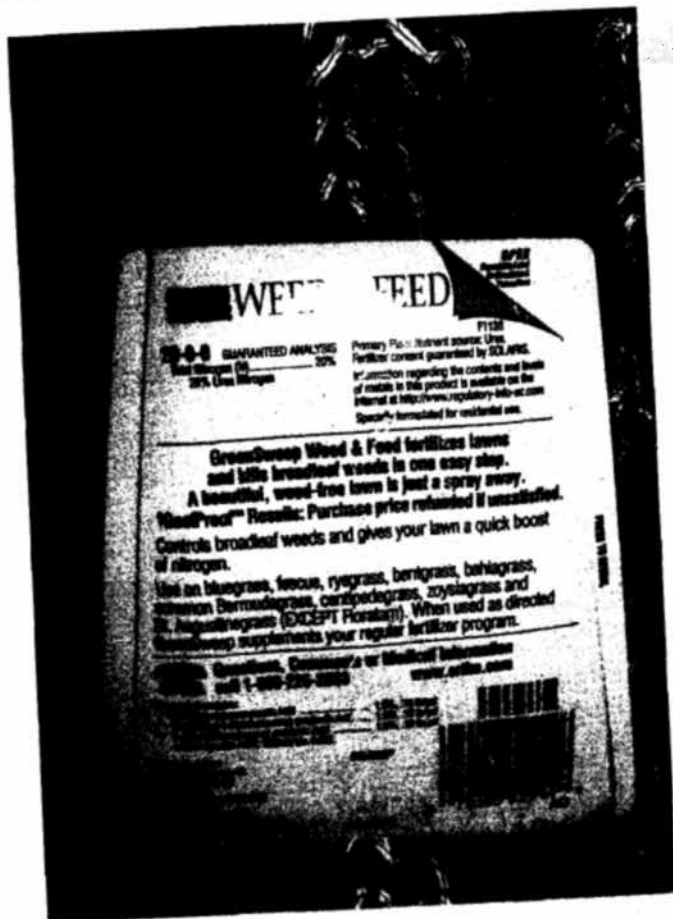
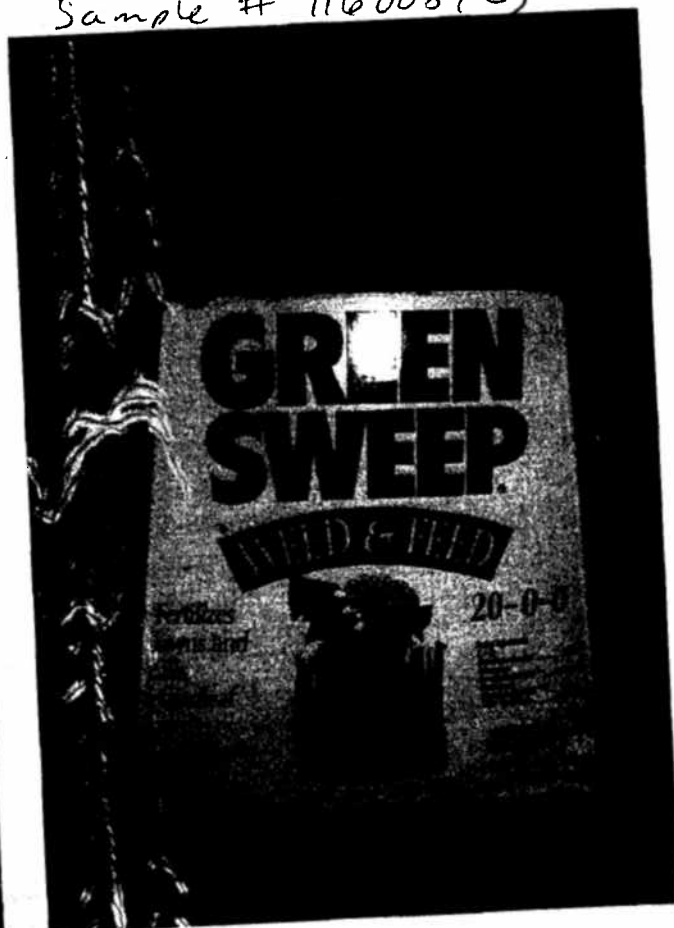
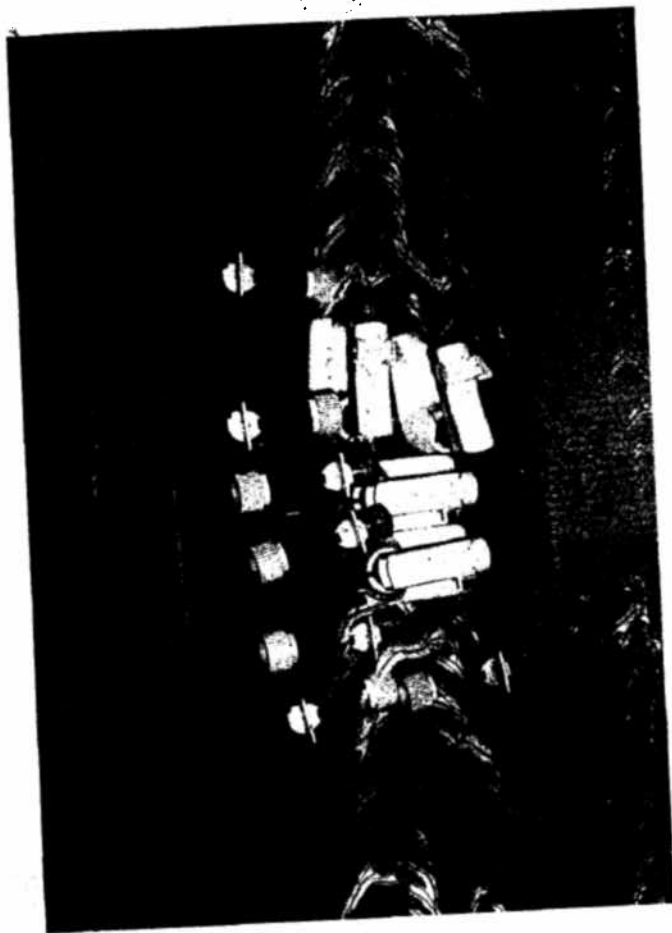
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Authorized Signature

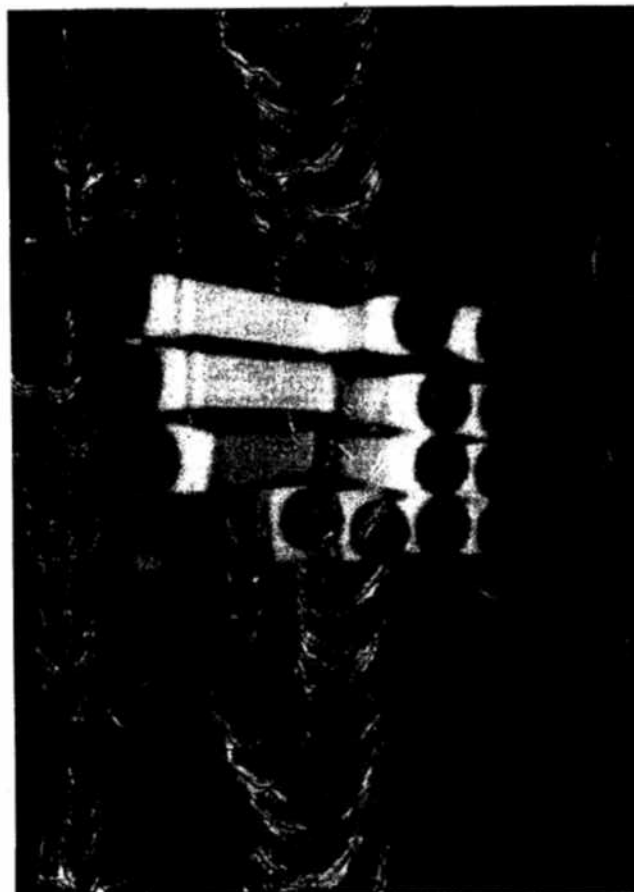
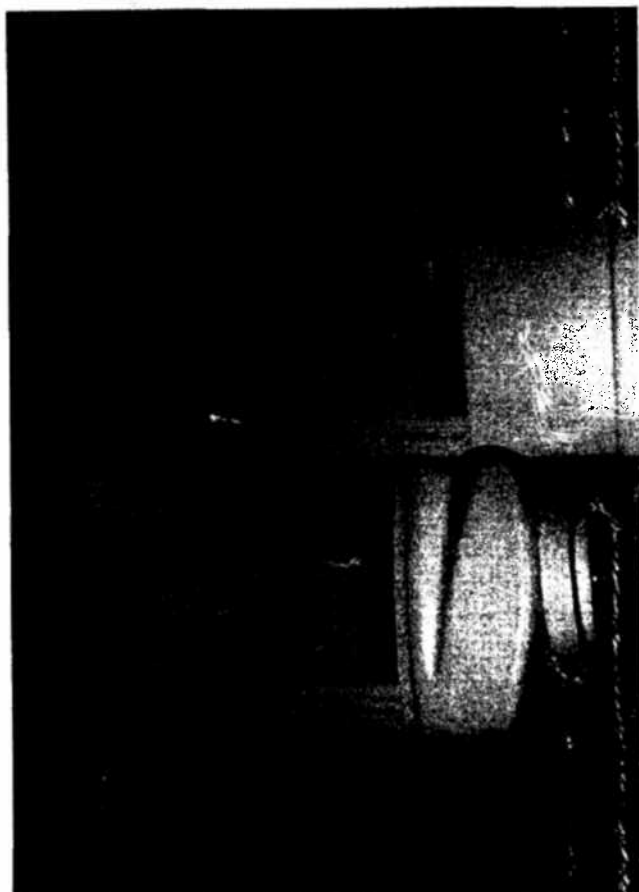
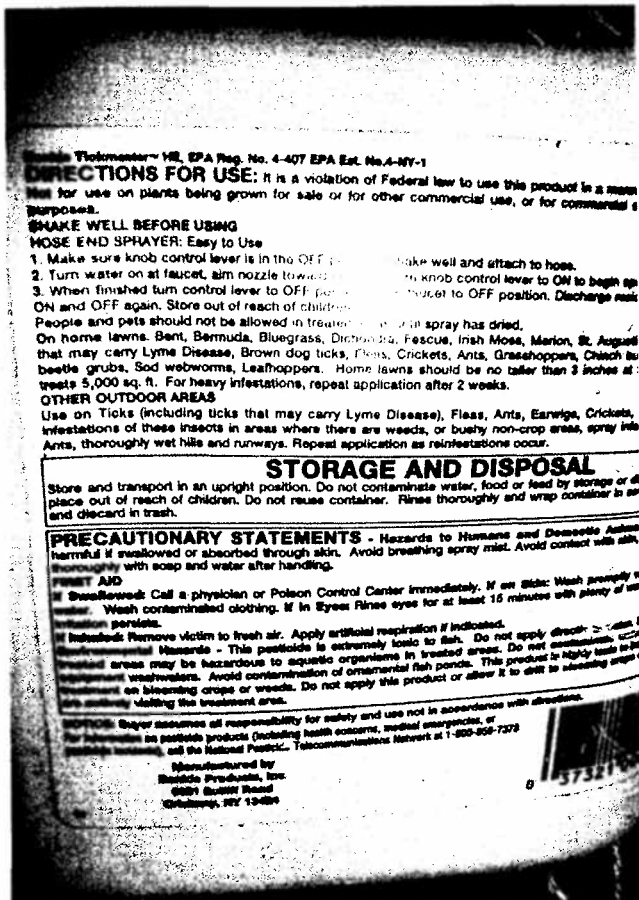
19 Oct 2011  
Date

92493  
Purchase Order #

[Signature]

Sample # 116008(2)





**FULEX NICOTINE FUMIGATOR****Label Information**

State Label  
Information:  
Federal Label  
Information:

**Product Information**

Product Name: FULEX NICOTINE  
FUMIGATOR  
EPA Registration Number: 1327-41  
Use: AGRICULTURAL  
Type: INSECTICIDE  
Status: NOT REGISTERED †  
Toxicity Statement: FISH AQUATIC  
INVERTEBRATES  
Signal Word: DANGER  
Precautionary Statement: ORAL, DERMAL &  
INHALATION  
Flammable: N  
Formulation: SELF-GEN. SMOKES  
Restricted: E  
Suspension Date: 12/31/2010  
Nassau/Suffolk Use Allowed: YES  
Initial Registration Date: 8/26/1994

**Ingredient Information**

Prefix	Active Ingredient Name	Active Ingredient Code	Percent of AI
	NICOTINE	056702	13.4

**Contact Information**

Manufacturer	Distributor	Payor
FULLER SYSTEM INC. PO BOX 3053 WOBURN, MA 01888		FULLER SYSTEM INC. PO BOX 3053 WOBURN, MA 01888

**Notes:**

†

This product has an **expired registration**. It is illegal to sell, offer for sale, distribute, or use any pesticide product in New York State unless the product has been properly registered with the New York State Department of Environmental Conservation.

E

**Federally restricted by EPA:** Federally restricted pesticide per EPA (the United States Environmental Protection Agency).

\*

Links to pesticide labels at this EPA site may not include restrictions specific to New York State use.

To view images from the EPA web site you will need to download a TIFF viewer. The following programs are recommended:

- MacOS: Graphic Converter
- Windows: AlternaTiff

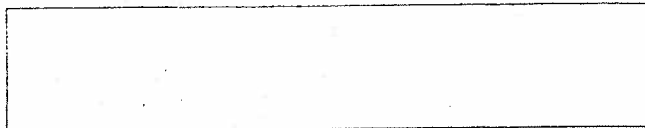
**Note:** These NYS pesticide product registration data are intended for **information purposes** only. If you are concerned about the status of a product, please contact the NYS DEC before purchase, distribution, sale, or use. Some products may show a renewal date that has passed. These products are in the re-registration process and continue to be registered pending a re-registration decision. Information contained in the database is updated approximately every week.

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# DOCUMENT SCAN CONTROL SHEET

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Document ID 502394



EPA # 1327-41

EPA #  
For SLN

Product FULEX NICOTINE FUMIGATOR  
Name

Accepted  
Date 6/17/2005

Document  
Type PRILAB

Registration ID 26711

PM: DJK

May 17, 2005

#502394

RECEIVED FOR  
"FLEX NICO" STATE  
IN NEW YORK PART 326



**DANGER**

### PRECAUTIONARY STATEMENTS

**Hazards To Humans And Domestic Animals**  
Fatal if swallowed, inhaled, or absorbed through the skin. Causes substantial but temporary eye injury. Do not get in eyes, on skin or on clothing. Do not breathe dust or fumes. Wear protective clothing, protective eyewear, and respiratory protection based under the "Personal Protective Equipment" section of the "Supplemental Labeling Fuller Nicotine Fumigator" sheet. Wash thoroughly with soap and water after handling and before eating or smoking. Remove contaminated clothing and wash before reuse.

#### Environmental Hazards

This pesticide is toxic to fish and aquatic organisms. Do not contaminate water by cleaning of equipment or disposing of wastes.

#### Physical Or Chemical Hazards

Do not operate this can near flammable or combustible materials.

### User Safety Recommendations

- Users should:
- ☐ Wash hands before eating, drinking, chewing gum, using tobacco or using the toilet.
  - ☐ Remove clothing immediately if pesticide gets inside. Then wash thoroughly and put on clean clothing.
  - ☐ Remove PPE immediately after handling this product. Wash the outside of gloves before removing. As soon as possible, wash thoroughly and change into clean clothing.

### STORAGE AND DISPOSAL

Do not contaminate water, food or feed by storage or disposal. **SPILLAGE:** Store in a dry, well-ventilated area away from feeds and food. Do not contaminate water, food or feed by storage, use or disposal of the pesticide. **PAVEMENT DISPOSAL:** Pesticide wastes are acutely hazardous. Improper disposal of excess pesticide, spray mixture or residue is a violation of Federal Law. If these wastes cannot be disposed of by use according to label directions, contact your State Pesticide or Environmental Control Agency or the hazardous waste representative at the nearest EPA Regional Office for guidance. **CONTAINER DISPOSAL:** Triple rinse (or equivalent). Then offer for recycling or reconditioning, or puncture and dispose of in a sanitary landfill, or by other procedures approved by state and local authorities.

### RESTRICTED USE PESTICIDE

Due to Very High Acute Irritation, Oral, Dermal and Eye Toxicity to Humans. For retail sale and use only by Certified Applicators or persons under their direct supervision and only for those uses covered by the Certified Applicator's certification.

**Fuller**  
**NICOTINE**  
**FUMIGATOR**

For use ONLY in greenhouses on ornamental plants to control aphids and most thrips.

One can (12 ounces) treats 20,000 cu. ft.

Active ingredient: Nicotine (Alkaloid).....13.4%

Inert ingredients.....86.6%

### KEEP OUT OF REACH OF CHILDREN

#### DANGER PELIGRO

Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle. (If you do not understand the label, find someone to explain it to you in detail.)

Can contain poisonous material which gives off poisonous smoke and vapors when ignited.

#### FIRST AID

Have label with you when obtaining treatment advice.

Call a poison control center, doctor, or 1-800-858-7378/1-800-222-1222 immediately.

If swallowed:  
- Have person sip a glass of water if able to swallow.  
- Do not induce vomiting unless told to do so by the poison control center or doctor.

If on skin or clothing:  
- Take off contaminated clothing.  
- Rinse skin immediately with plenty of water for about 15-20 minutes.  
- Call a poison control center or doctor immediately for treatment advice.

If inhaled:  
- Move person to fresh air.  
- If person is not breathing, call an ambulance, then give artificial respiration, preferably mouth-to-mouth, if possible.

If in eyes:  
- Call a poison control center or doctor immediately for treatment advice.  
- Hold eyes open and flush slowly and gently with water for 15-20 minutes.  
- Remove contact lenses, if present, after the first five minutes, then continue flushing eyes.

(See Back Panel for additional precautionary statements.)

### DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.

Refer to the sheet entitled "Supplemental Labeling for Fuller Nicotine Fumigator" for complete instructions for worker protection, use and reentry.

### AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. Refer to supplemental labeling under "Agricultural Use Requirements" in the Directions for Use section for information about this standard.

Net Weight 12 Ounces

FULLER SYSTEM, INC.  
WOBURN, MASS. U.S.A.

E.P.A. Reg. No. 1327-41 E.P.A. Est. No. 01327-44A-01

ACCEPTED  
FOR REGISTRATION

JUN 17 2005

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION  
BUREAU OF PESTICIDES AND HAZARDOUS MATERIALS  
Pesticide Registration Section

## SUPPLEMENTAL LABELING FOR FULEX NICOTINE FUMIGATOR EPA REGISTRATION NO. 1327-41

See Basic Product Labeling for complete information about ingredients, restrictions, precautionary statements, and storage and disposal.

### RESTRICTED USE PESTICIDE

Due to Very High Acute Inhalation, Oral, Dermal and Eye Toxicity to Humans.

For retail sale to and use only by Certified Applicators or persons under their direct supervision, and only for uses covered by the Certified Applicator's certification.

### PRECAUTIONARY STATEMENTS

#### HAZARDS TO HUMANS & DOMESTIC ANIMALS

##### Personal Protective Equipment

Applicators and other handlers must wear: 1) Coveralls over long-sleeved shirt and long pants, 2) Waterproof gloves, 3) Chemical-resistant footwear plus socks, 4) Protective eyewear, 5) Chemical resistant headgear for overhead exposure and 6) A respirator with either an organic vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G).

### DIRECTIONS FOR USE

It is a violation of Federal law to use this product in a manner inconsistent with its labeling.  
Notify local Fire Department before fumigating.

### AGRICULTURAL USE REQUIREMENTS

Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170. This Standard contains requirements for the protection of agricultural workers on farms, forests, nurseries and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label about personal protective equipment (PPE), notification to workers, and restricted-entry interval. The requirements in this box only apply to uses of this product that are covered by the Worker Protection Standard.

**Entry Restrictions:** Entry by any person -- other than a correctly trained and equipped handler who is performing a task permitted by the WPS -- is PROHIBITED in the entire greenhouse from the start of application until one of the WPS ventilation criteria has been met. The WPS ventilation criteria can not begin until application is complete, i.e., when smoke is no longer being produced. Refer to WPS ventilation criteria in CFR 40 Part 170.110(c)(3).

**PPE for Entry During the Restricted Entry Interval:** PPE for entry by handlers into smoke-treated greenhouses before WPS ventilation criteria have been met is listed in the "Hazards to Humans and Domestic Animals" section of this labeling.

**Notification:** Notify workers of the application by warning them orally and by posting fumigant warning signs at all entrances to the greenhouse. These signs must bear the skull and crossbones symbol and state: (1) "DANGER/PELIGRO", (2) "Greenhouse under fumigation, DO NOT ENTER/ NO ENTRE", (3) The date and time of fumigation, (4) "Fulex Nicotine Fumigant in use" and (5) name, address and telephone number of an applicator. Post the fumigant sign for this application, but follow all WPS requirements pertaining to location, legibility, size and timing of posting and removal."

### USE RESTRICTIONS

For use ONLY in greenhouses on ornamental plants to control aphids and most thrips. Do not use on violets. One can (12 ounces) treats 20,000 cu. ft.

### PREAPPLICATION INSTRUCTIONS

Close all greenhouse vents prior to use. Block or barricade entries and post warning signs. Do not place generators on wood or other flammable materials as fire hazard may result. Turn off misting systems. Keep generators a minimum of 2 feet away from plants. Temperatures in the greenhouse must be between 70 Degrees F to 90 Degrees F (21.1 Degrees C to 32.2 Degrees C). Foliage and blooms should be free of moisture and relative humidity should be low. Soil should be moist but do not water on the day of application. Do not apply on rainy or windy days. Pick open blooms before applications.

Calculate volume in cubic feet of greenhouse space to be treated to determine amount of product required for application. Use only this amount. Carbon or Fly Ash: The larger size cans may throw particles of carbon into the air nearby under certain conditions. If this becomes objectionable, we suggest placing the cans on their sides before lighting. Face them all in one direction (away from the greenhouse exit) lengthwise in the walk. Insert sparklers in the usual manner by igniting the cans while on their sides. Where the greenhouse being fumigated is large enough to require that generators be placed in more than one walk, it is recommended that one person be assigned to light the generators in each walk starting at the end farthest from the exit, so that the fumigation in each walk may start simultaneously and all persons exit from the house simultaneously.

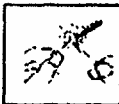
### APPLICATION DIRECTIONS

1. Determine the proper number of cans needed.
2. Shake each can.
3. Distribute the cans in the center aisle of an ordinary greenhouse. AWAY FROM FLAMMABLE MATERIALS, in the following manner; one can within 10 feet of the ends of the greenhouse and the remaining cans spaced equidistant throughout the length of the greenhouse. As you space the cans in their proper positions, you should unscrew and remove top covers. After cans have been properly distributed prior to ignition, use a match or a cigarette lighter and light the sparkler at the bottom near the handle end so that it will burn toward the top end of the sparkler. Then, after the sparkler is lighted, insert it deep into the contents of the can. The first can ignited should be the farthest one from the exit to the greenhouse. Proceed to the next can, etc. until all cans are ignited; then get out of the greenhouse IMMEDIATELY.



STEP 1

Space cans in greenhouse center walk (or in a walk nearest the center) as shown. Remove tops of cans when placing them in position for lighting.



STEP 2

Starting with can farthest from exit, light sparklers as shown (at handle end).



STEP 3

Insert lighted sparkler deeply into contents of can. Then proceed to next can, light another sparkler, etc. until all cans are ignited.

### REPEAT APPLICATIONS

Repeat fumigations in one week if necessary.

FULEX 20M NICOTINE FUMIGATOR

SUPPLEMENTARY DATASHEET

**Attachment # 2****Product, Ingredient, and Manufacturer System**

Last update: 06/27/2011

**NYS Products—Archived**

Records per page: 25 | Record 1 of 1

	Product Name	EPA Reg Num	Company	Distributor	Restrictions	LI Use	Labels
1	BONIDE CAPTAN 50% WP	66330- 27-4	ARYSTA LIFESCENCE NORTH AMERICA, LLC (66330)	BONIDE PRODUCTS, INC. (4)		YES	NYS EPA *

Records per page: 25 | Record 1 of 1

5 it transmittal  
BONIDE CAPTAN 50% WP

**Label Information**

State Label  
Information:  
Federal Label \*  
Information:

**Product Information**

Product Name: BONIDE CAPTAN 50% WP  
EPA Registration Number: 66330-27-4  
Use: HOME GARDEN  
Type: FUNGICIDE  
Status: NOT REGISTERED ‡  
Toxicity Statement: FISH  
Signal Word: DANGER  
Precautionary Statement: ORAL, DERMAL &  
Inhalation  
Flammable: N  
Formulation: WETTABLE POWDERS  
Restricted: NONE  
Suspension Date: 3/31/2011  
Nassau/Suffolk Use Allowed: YES  
Initial Registration Date: 10/17/1997

**Ingredient Information**

Prefix	Active Ingredient Name	Active Ingredient Code	Percent of AI
	CAPTAN	081301	50

**Contact Information**

Manufacturer	Distributor	Payor
ARYSTA LIFESCIENCE NORTH AMERICA, LLC 15401 WESTON PARKWAY, SUITE 150 CARY, NC 27513	BONIDE PRODUCTS, INC. 6301 SUTLIFF ROAD ORISKANY, NY 13424	BONIDE PRODUCTS, INC. 6301 SUTLIFF ROAD ORISKANY, NY 13424

**Notes:**

‡

This product has an **expired registration**. It is illegal to sell, offer for sale, distribute, or use any pesticide product in New York State unless the product has been properly registered with the New York State Department of Environmental Conservation.

\*

Links to pesticide labels at this EPA site may not include restrictions specific to New York State use.

To view images from the EPA web site you will need to download a TIFF viewer. The following programs are recommended:

- MacOS: Graphic Converter
- Windows: AlternaTiff

**Note:** These NYS pesticide product registration data are intended for **information purposes only**. If you are concerned about the status of a product, please contact the NYS DEC before purchase, distribution, sale, or use. Some products may show a renewal date that has passed. These products are in the re-registration process and continue to be registered pending a re-registration decision. Information contained in the database is updated approximately every week.

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**Attachment # 3****BONIDE SYSTEMIC GRANULES CONTAINS DI-SYSTON****Product Information**

<b>Product Name:</b> BONIDE SYSTEMIC GRANULES CONTAINS DI- SYSTON	<b>EPA Registration Number:</b> 4-153
<b>Use:</b> HOME GARDEN	<b>Type:</b> INSECTICIDE
<b>Status:</b> NOT REGISTERED ‡	<b>Toxicity Statement:</b> FISH BIRDS WILDLIFE
<b>Signal Word:</b> WARNING	<b>Precautionary Statement:</b> ORAL, DERMAL & INHALATION
<b>Flammable:</b> N	<b>Formulation:</b> GRANULAR
<b>Restricted:</b> NONE	<b>Suspension Date:</b> 3/31/2011
<b>Nassau/Suffolk Use Allowed:</b> YES	<b>Initial Registration Date:</b> 3/22/1986

**Ingredient Information**

Prefix	Active Ingredient Name	Active Ingredient Code	Percent of AI
DISULFOTON		032501	2

**Contact Information**

Manufacturer	Distributor	Payor
BONIDE PRODUCTS, INC. 6301 SUTLIFF ROAD ORISKANY, NY 13424		BONIDE PRODUCTS, INC. 6301 SUTLIFF ROAD ORISKANY, NY 13424

**Notes:**

‡

This product has an **expired registration**. It is illegal to sell, offer for sale, distribute, or use any pesticide product in New York State unless the product has been properly registered with the New York State Department of Environmental Conservation.

**Note:** These NYS pesticide product registration data are intended for **information purposes** only. If you are concerned about the status of a product, please contact the NYS DEC before purchase, distribution, sale, or use. Some products may show a renewal date that has passed. These products are in the re-registration process and continue to be registered pending a re-registration decision. Information contained in the database is updated approximately every week.

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## TICKMASTER

Attachment #4

## Product Information

Product Name:	TICKMASTER
EPA Registration Number:	4-407
Use:	HOME GARDEN
Type:	INSECTICIDE
Status:	NOT REGISTERED ‡
Toxicity Statement:	FISH BEES
Signal Word:	CAUTION
Precautionary Statement:	ORAL & DERMAL
Flammable:	N
Formulation:	LIQUID
Restricted:	NONE
Suspension Date:	3/31/2009
Nassau/Suffolk Use Allowed:	YES
Initial Registration Date:	7/26/1999

## Ingredient Information

Prefix	Active Ingredient Name	Active Ingredient Code	Percent of AI
	PERMETHRIN, MIXED CIS, TRANS	109701	2.5

## Contact Information

Manufacturer	Distributor	Payor
BONIDE PRODUCTS, INC. 6301 SUTLIFF ROAD ORISKANY, NY 13424		BONIDE PRODUCTS, INC. 6301 SUTLIFF ROAD ORISKANY, NY 13424

## Notes:

‡

This product has an **expired registration**. It is illegal to sell, offer for sale, distribute, or use any pesticide product in New York State unless the product has been properly registered with the New York State Department of Environmental Conservation.

**Note:** These NYS pesticide product registration data are intended for **information purposes** only. If you are concerned about the status of a product, please contact the NYS DEC before purchase, distribution, sale, or use. Some products may show a renewal date that has passed. These products are in the re-registration process and continue to be registered pending a re-registration decision. Information contained in the database is updated approximately every week.

*Attachment #5***GREENSWEEP WEED & FEED 20-0-0****Product Information**

<b>Product Name:</b>	GREENSWEEP WEED & FEED 20-0-0
<b>EPA Registration Number:</b>	239-2640
<b>Use:</b>	HOME GARDEN
<b>Type:</b>	HERBICIDE
<b>Status:</b>	NOT REGISTERED ‡
<b>Toxicity Statement:</b>	AQUATIC INVERTEBRATES
<b>Signal Word:</b>	CAUTION
<b>Precautionary Statement:</b>	ORAL & DERMAL
<b>Flammable:</b>	N
<b>Formulation:</b>	LIQUID
<b>Restricted:</b>	NONE
<b>Suspension Date:</b>	12/31/2006
<b>Nassau/Suffolk Use Allowed:</b>	YES
<b>Initial Registration Date:</b>	8/1/1995

**Ingredient Information**

Prefix	Active Ingredient Name	Active Ingredient Code	Percent of AI
	DIMETHYLAMINE 2,4-DICHLOROPHENOXYACETATE	030019	2.29
	DIMETHYLAMINE 2-(2,4-DICHLOROPHENOXY) PROPIONATE	031419	2.26
	MECOPROP, DIMETHYLAMINE SALT	031519	2.3

**Contact Information**

Manufacturer	Distributor	Payor
ORTHO GROUP, THE 14111 SCOTTS LAWN ROAD MARYSVILLE, OH 43040		ORTHO GROUP (WAS SOLARIS) P.O. BOX 190 MARYSVILLE, OH 43040

**Notes:**

‡

This product has an **expired registration**. It is illegal to sell, offer for sale, distribute, or use any pesticide product in New York State unless the product has been properly registered with the New York State Department of Environmental Conservation.

**B-Nine**

**DECONTAMINATION STATION**

**WATER TOWELS**

**Emergency Numbers**

For full body decontamination, use any hose in the greenhouse to wash yourself off.

REMOVE CLOTHES IF ALL DIED.

CALL SOMEONE FOR HELP.

Jolene Rhodes 777-0207 cell phone

**FOR FULL BODY DECONTAMINATION**

USE ANY HOSE IN THE GREENHOUSE TO WASH YOURSELF OFF

REMOVE CLOTHES IF ALL DIED

CALL SOMEONE FOR HELP

Jolene Rhodes 777-0207 cell phone

**DECONTAMINATION STATION**

**WATER TOWELS**

**Emergency Numbers**

For full body decontamination, use any hose in the greenhouse to wash yourself off.

REMOVE CLOTHES IF ALL DIED.

CALL SOMEONE FOR HELP.

Jolene Rhodes 777-0207 cell phone

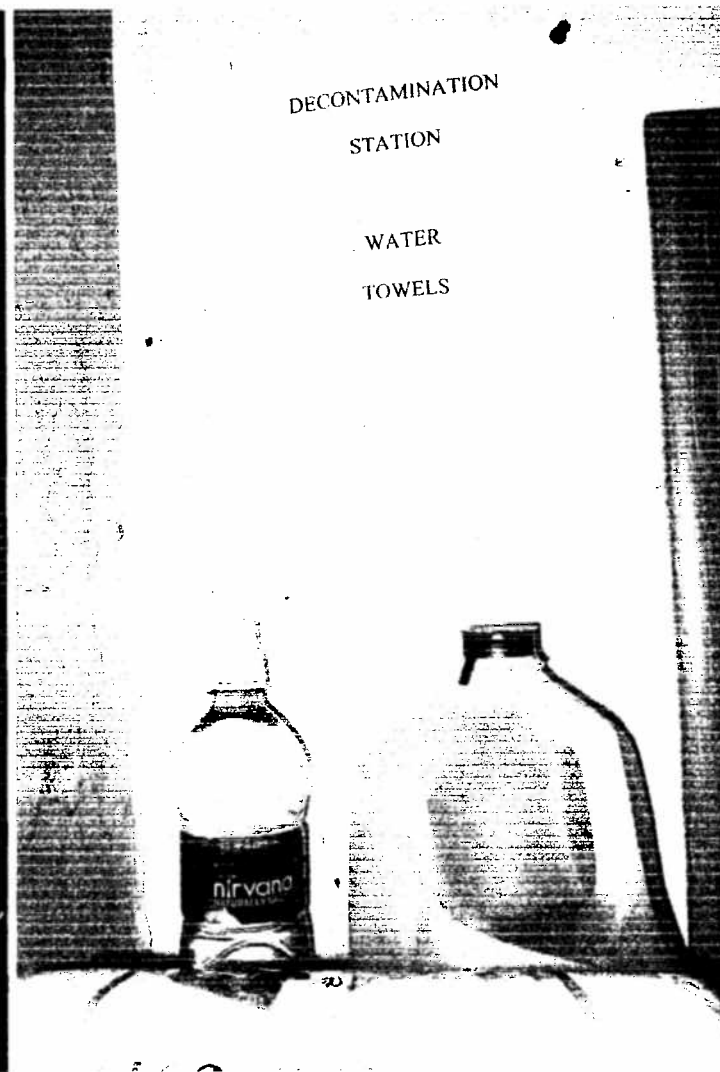
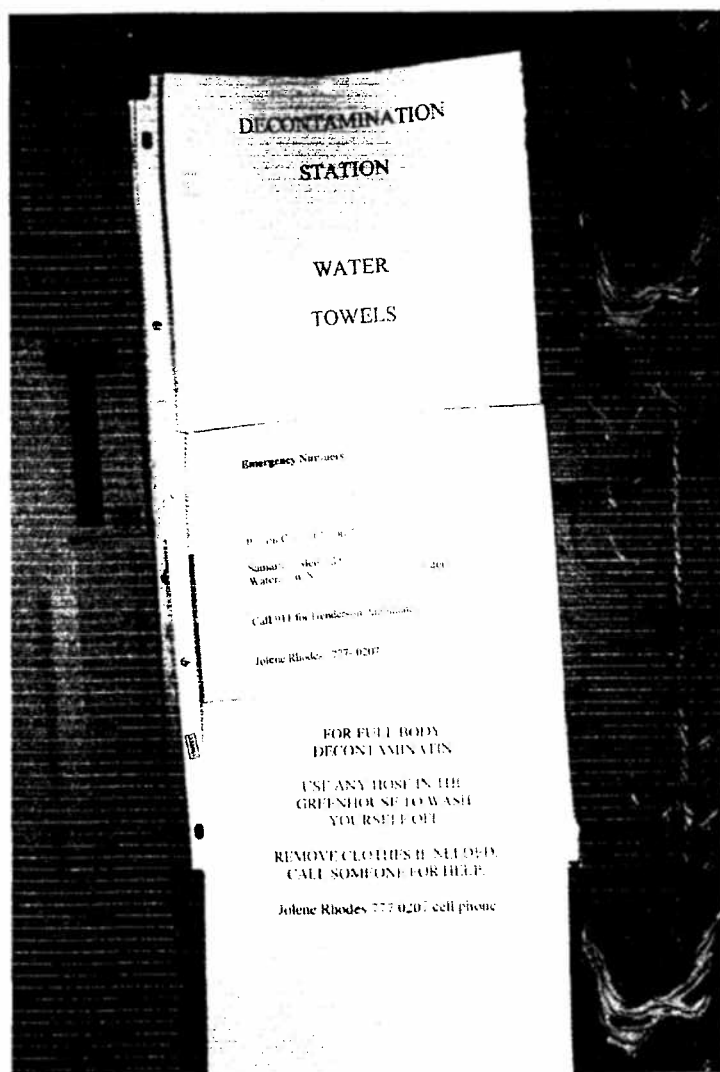
**FOR FULL BODY DECONTAMINATION**

USE ANY HOSE IN THE GREENHOUSE TO WASH YOURSELF OFF

REMOVE CLOTHES IF ALL DIED

CALL SOMEONE FOR HELP

Jolene Rhodes 777-0207 cell phone



**Emergency Numbers**

Samaritan Medical Center  
Watertown, NY

315 785-4000

Call 911 for Henderson Ambulance

Jolene Rhodes 777-0207

FOR FULL BODY  
DECONTAMINATION

USE ANY HOSE IN THE  
GREENHOUSE TO WASH  
YOURSELF OFF

REMOVE CLOTHES IF NEEDED,  
CALL SOMEONE FOR HELP.

Jolene Rhodes 777 0207 cell phone

**Agricultural Establishment Owners and Operators:**  
 are considered *not* if you hire custom applicators or independent crop  
 advisors, *you must provide this information to the employers of those persons.* This  
 information is required if you have a contract with a custom applicator or independent crop  
 advisor that requires the applicator or advisor to follow your standards or follow all  
 or some of the training in the Federal Worker Protection Standard or follow all  
 or some of the standards contained in the Worker Protection Standard. The  
 information is also required if you have a contract with a custom applicator or  
 independent crop advisor that requires the applicator or advisor to follow all or some of the  
 standards in the Worker Protection Standard. This information is also required if you have a contract with a custom applicator or independent crop advisor that requires the applicator or advisor to follow all or some of the standards in the Worker Protection Standard. This information is also required if you have a contract with a custom applicator or independent crop advisor that requires the applicator or advisor to follow all or some of the standards in the Worker Protection Standard.

APPLICATORS AND INDEPENDENT CROP ADVISORS

	Application #1	Application #2
Access to be Granted in Entry Restricted Entry Entry ok: Location & Description	Back S.H's Found 40 PEI - 4 Hrs	
Entry Restricted Until: Month Day Year	1 PM 7-27-2011	
PPE Required for Handlers*	4 gloves	
Early Entry PPE Required for Workers*	NO ONE TO ENTER	

\* The only early entry allowed is that which is necessary to

\*The only early entry allowed is that which is permitted by the Federal Worker Protection Standard including all known through you.

**PESTICIDAS  
PROTEJASE  
DE LOS  
PESTICIDAS**

IN AN EMERGENCY  
IN AN EMERGENCY

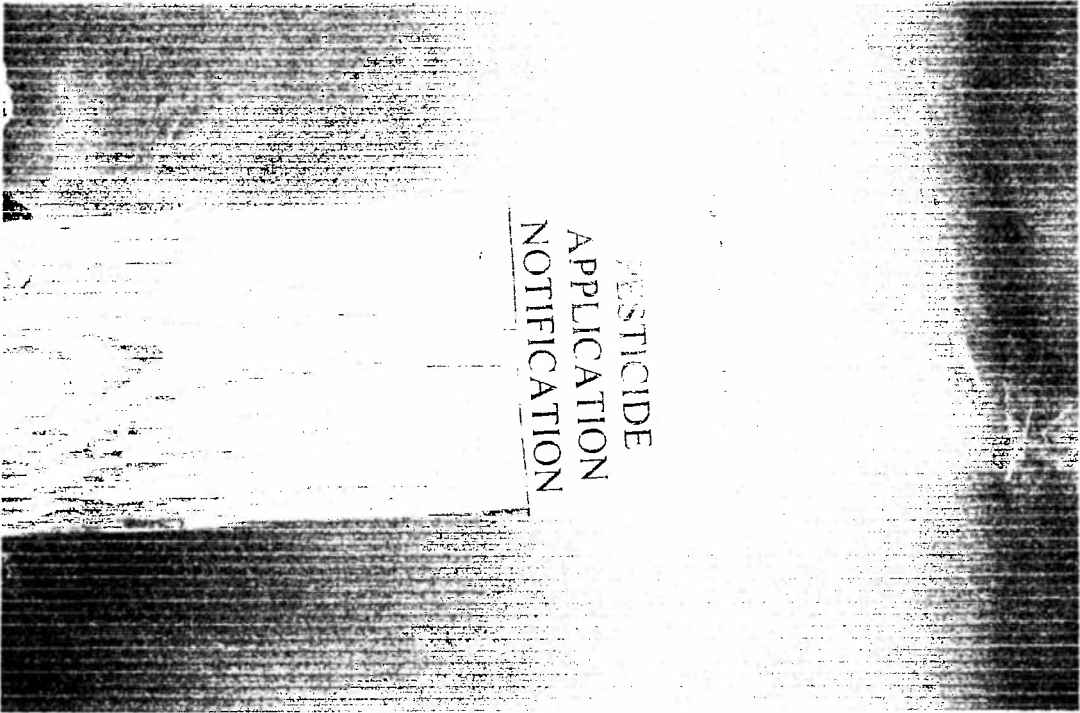
3EPA

United States Department of Justice  
Federal Bureau of Investigation  
Washington, D. C. 20535

For additional copies of this poster, call GEMPIUS Inc. at 800-382-8473. Use Order No. 1992... price is \$1.50 ea.



PESTICIDE  
APPLICATION  
NOTIFICATION



PESTICIDE  
APPLICATION  
NOTIFICATION

This picture shows the box where we have put all material for employees to look at concerning pesticides, WP and Other pertaining information.

EMPLOYEE  
PESTICIDE  
AND WORKER  
PROTECTION  
INFORMATION

Training statements by employees  
Rhodes Greenhouses  
Worker Protection Training

Rhodes Greenhouses  
7185 NYS Rt. 3  
Henderson, New York 13650

Worker Protection Training

1. Use of Pesticides
2. Posting of Applications for Employee use
3. Safety Poster
4. Emergency Medical Information
5. Entry into treated areas-REI Restricted entry interval
6. Decontamination site
7. Advising someone of an incident or contact
8. Location of label information

Employee Name:

McKenna O'Keefe

Employee signature stating that they have been trained in worker protection training on the below date :

McKenna O'Keefe

Date : 7/27/11

Employee Signature :

McKenna O'Keefe

Rhodes Greenhouses  
7185 NYS Rt. 3  
Henderson, New York 13650

Worker Protection Training

1. Use of Pesticides
2. Posting of Applications for Employee use
3. Safety Poster
4. Emergency Medical Information
5. Entry into treated areas-REI Restricted entry interval
6. Decontamination site
7. Advising someone of an incident or contact
8. Location of label information

Employee Name:

Amanda Av Rhodes

Employee signature stating that they have been trained in worker protection training on the below date :

Date : 7-12-11

Employee Signature :

Amanda Av Rhodes

Rhodes Greenhouses  
7185 NYS Rt. 3  
Henderson, New York 13650

Worker Protection Training

1. Use of Pesticides
2. Posting of Applications for Employee use
3. Safety Poster
4. Emergency Medical Information
5. Entry into treated areas-REI Restricted entry interval
6. Decontamination site
7. Advising someone of an incident or contact
8. Location of label information

Employee Name:

Dr. Tracy Sheradin, PhD

Employee signature stating that they have been trained in worker protection training on the below date :

Date : 7/12/11

Employee Signature :

Dr. Tracy Sheradin, PhD.

Rhodes Greenhouses  
7185 NYS Rt. 3  
Henderson, New York 13650

Worker Protection Training

1. Use of Pesticides
2. Posting of Applications for Employee use
3. Safety Poster
4. Emergency Medical Information
5. Entry into treated areas-REI Restricted entry interval
6. Decontamination site
7. Advising someone of an incident or contact
8. Location of label information

Employee Name: *Janille Lehman*

Employee signature stating that they have been trained in worker protection training on the below date :

Date : *7-12-11*

Employee Signature : *Janille M. Lehman*

Rhodes Greenhouses  
7185 NYS Rt. 3  
Henderson, New York 13650

Worker Protection Training

1. Use of Pesticides
2. Posting of Applications for Employee use
3. Safety Poster
4. Emergency Medical Information
5. Entry into treated areas-REI Restricted entry interval
6. Decontamination site
7. Advising someone of an incident or contact
8. Location of label information

Employee Name: *Jolene K. Rhodes*

Employee signature stating that they have been trained in worker protection training on the below date :

Date : *7-12-11*

Employee Signature :

*Jolene K Rhodes*

Rhodes Greenhouses  
7185 NYS Rt. 3  
Henderson, New York 13650

Worker Protection Training

1. Use of Pesticides
2. Posting of Applications for Employee use
3. Safety Poster
4. Emergency Medical Information
5. Entry into treated areas-REI Restricted entry interval
6. Decontamination site
7. Advising someone of an incident or contact
8. Location of label information

Employee Name:

*Jonathan Rhodes*

Employee signature stating that they have been trained in worker protection training on the below date :

Date : *7-12-11*

Employee Signature :

*Jonathan Rhodes*

**New York State Department of Environmental Conservation**

**Regional Director, Region 6**

**Dulles State Office Building**

**317 Washington Street, Watertown, New York 13601-3787**

**Phone: (315) 785-2239 • Fax: (315) 785-2242**

**Website: [www.dec.ny.gov](http://www.dec.ny.gov)**



**Joe Martens  
Commissioner**

**MEMORANDUM**

**TO: Judy Drabicki**  
**FROM: Nels Magnuson**  
**RE: Legislative Contact**  
**DATE: October 17, 2011**

\*\*\*\*\*

DEC Staff, Nels Magnuson, was contacted by NYS Assembly Person Ken Blankenbush's staff person Julie Robbins.

Contacted by: Telephone

**REASON FOR CONTACT:** Gary Rhodes of Rhodes Greenhouses contacted his office regarding an ongoing enforcement action by the NYSDEC against Mr. Rhodes and his company. Mr. Rhodes provided them with information regarding the monetary penalty sought (\$6,100, \$3,100 of which is suspended) and the information requested by the NYSDEC to substantiate Mr. Rhodes financial hardship (individual and company financial disclosure forms). Mr. Rhodes commented that he had not been visited by a representative of the NYSDEC for 10 years prior to this.

**RESPONSE:** I told Ms. Robbins that the NYSDEC (Nels Magnuson and Robert Freese) has a meeting scheduled with Mr. Rhodes on Wednesday, October 19, 2011, at which time we will discuss with him a resolution of the matter. ( By way of background, I sent Mr. Rhodes a proposed consent order in September for pesticide violations found when Rob Freese inspected the Geenhouses and spoke to Mr. Rhodes in June. Rob sent him and NOV in July. After I spoke to Mr. Rhodes by phone earlier this month and he claimed financial hardship, I sent him financial disclosure forms to complete.) I told Ms. Robbins that if Mr. Rhodes continues to have concerns after our meeting that he is free to contact their office, and they can contact me or Judy.

**ACTION:** Meeting with Mr. Rhodes on Wednesday, October 19, 2011 to discuss resolution of the pending enforcement action.

ec: Robert Freese  
Peter Taylor  
Gregg Townsend  
Randall Young

**New York State Department of Environmental Conservation  
Office of General Counsel, Region 6**

**Dulles State Office Building**

317 Washington Street, Watertown, New York 13601-3787

**Phone:** (315) 785-2238 • **Fax:** (315) 785-2242

**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

October 20, 2011

Mr. Gary Rhodes  
Rhodes Greenhouses, Inc.  
P.O. Box 220  
Belleville, New York 13611

RE: Violations of ECL Article 33, 6 NYCRR Part 325, and 40 CFR 170 (Pesticide Laws and Regulations)  
Site: Rhodes Greenhouses, Inc., 7185 NYS Route 3, Town of Henderson, Jefferson County, New York

Dear Mr. Rhodes:

This letter is in follow up to your meeting with Robert Freese and me on October 19, 2011. Enclosed is the revised Consent Order with the reduced payable penalty and payment schedule we discussed.

Please have the Consent Order signed on behalf of both Rhodes Greenhouses, Inc. and Gary Rhodes before a notary public and return the entire Consent Order to me, together with the first installment of the payable penalty, within 10 days of the date of this letter. In the meantime, please contact me if you have any questions. Thank you.

Sincerely,

Nels G. Magnuson  
Assistant Regional Attorney  
Region 6

NGM:als

Enclosure

cc: Robert Freese (w/enc.)  
Peter Taylor

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of Article 33 of the  
Environmental Conservation Law (ECL), Part 325 of  
Title 6 of Codes, Rules and Regulations of the State of  
New York (NYCRR), and Part 170 of Title 40 of Code of  
Federal Regulations (CFR) by:

---

**Rhodes Greenhouses, Inc. and Gary Rhodes**  
Town of Henderson  
Jefferson County

**ORDER ON CONSENT**  
**Case # R6-20110722-38**

Respondents.

---

**WHEREAS:**

**Rhodes Greenhouses, Inc. and Gary Rhodes**, P.O. Box 220, Belleville, New York 13611, having violated Article 33 of the ECL, Part 325 of Title 6 of the NYCRR, and Part 170 of Title 40 of the CFR at Rhodes Greenhouses, Inc., 7185 NYS Route 3, town of Henderson, Jefferson County, New York, at the time and in the manner as stated below, and having waived the right to a hearing on said violations, and after due consideration having been had thereon, it appearing that this order will be advantageous to the state, now therefore,

**IT IS HEREBY ORDERED**, pursuant to the applicable provisions of the ECL and/or Rules and Regulations that:

- I. The amount of Six Thousand One Hundred Dollars (\$6,100) shall be paid to the Department of Environmental Conservation as a penalty for the violations described below. **Four Thousand One Hundred Dollars (\$4,100) of which is hereby suspended provided that Respondents comply with the terms of the attached Schedule A by reason of such violations.**
- II. Respondents shall comply with the terms of the attached Schedule A by reason of such violations. Respondents' failure to comply fully and in a timely fashion with any provision, term, or condition of this order shall constitute a default and a failure to perform an obligation under this order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondents by the Department.
- III. No change in this order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.
- IV. Respondents shall indemnify and hold harmless the Department, the state of New York, and their representatives and employees for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this order by Respondents and their successors (including successors in title) and assigns.
- V. Upon completion of all obligations created in this order, this order settles only all claims for civil and administrative penalties concerning the violations described below against Respondents and their successors (including successors in title) and assigns.

- VI. Nothing contained in this order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondents.
- VII. The effective date of this order is the date that the Commissioner or his designee signs it.

## CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this order, waive their rights to a hearing herein as provided by law, and agree to be bound by the provisions, terms, and conditions contained in this order.

Rhodes Greenhouses, Inc.

By: \_\_\_\_\_

**Title:** \_\_\_\_\_

Date: \_\_\_\_\_

## CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss:  
COUNTY \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me personally came \_\_\_\_\_ to me known, and who by me being duly sworn, did depose and say that he is the \_\_\_\_\_ of the corporation described in and which executed the foregoing Instrument, and he duly acknowledged to me that he executed the same as authorized by said corporation.

NOTARY PUBLIC

Respondent: Gary Rhodes

By: \_\_\_\_\_  
[Signature of Respondent]

Date: \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the subscriber, personally came \_\_\_\_\_ to me known and who by me being duly sworn, did depose and say that he is the person described in and who executed the foregoing Instrument, and he duly acknowledged to me that he signed his name thereto.

\_\_\_\_\_  
NOTARY PUBLIC

Dated: Watertown, New York, \_\_\_\_\_, 2011

Commissioner Joseph J. Martens,  
New York State Department of Environmental Conservation

By: \_\_\_\_\_  
Judy Drabicki  
Regional Director  
Region 6

	Description of Violation	CITATION		Date	Location of Violation (Town / County)
		Permit # / Section (if applicable)	Environmental Conservation Law and/or Regulation		
1	Respondent Rhodes Greenhouses, Inc. offered for sale within New York State pesticides (Bonide Captan 50% WP, Bonide Systemic Granules, Bonide Tickmaster, and Greensweep Weed & Feed 20-0-0) which were not registered with the Department.		ECL §33-0701 and §33-1301 (1)(a)	June 29, 2011	Henderson / Jefferson County
2	Respondent Gary Rhodes, who was not a certified pesticide applicator, applied a restricted use fumigant (Fulex Nicotine Fumigator).		6 NYCRR § 325.7(d) (2)(iv)	June 24, 2011	Henderson / Jefferson County
3	Respondent Gary Rhodes used, within New York State, a restricted use pesticide (Fulex Nicotine Fumigator) which was not registered with the Department.		ECL §33-0701 and §33-1301 (1)(a)	June 24, 2011	Henderson / Jefferson County
4	Respondent Gary Rhodes, while using a pesticide under the supervision of a certified private pesticide applicator, did not have in his custody and did not make available for inspection upon request of the Department a legible copy of the label for the pesticide being used.		ECL §33-1301 (1)(b) and 6 NYCRR § 325.2(d)	June 24, 2011	Henderson / Jefferson County
5	Respondents Rhodes Greenhouses, Inc. and Gary Rhodes, while using a pesticide, did not follow the directions on the label by failing to comply with Federal Worker Protection Standards (40 CFR 170), including the following: a) 40 CFR 170.122 requires agricultural employers to provide workers with specific information about pesticide applications at the agricultural establishment;		6 NYCRR § 325.2(b)	June 24, 2011	Henderson / Jefferson County

	<p>specific information about pesticide applications at the agricultural establishment;</p> <p>b) 40 CFR 170.130(a) requires agricultural employers to provide each worker with safety training;</p> <p>c) 40 CFR 170.135 requires agricultural employers to display pesticide safety information for workers;</p> <p>d) 40 CFR 170.150 requires agricultural employers to provide decontamination supplies for workers; and,</p> <p>e) 40 CFR 170.222 requires agricultural employers to post specific information about pesticide applications for workers at the agricultural establishment.</p>				
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**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Respondents' Names: Rhodes Greenhouses, Inc. and Gary Rhodes**

**No. R6-20110722-38**

**SCHEDULE A**

**To settle violations of the New York State Environmental Conservation Law, the above-referenced Respondent shall, on or before the dates indicated:**

REQUIRED ACTION	DUE DATE
<p>1. Submit civil penalty payment of Two Thousand Dollars (\$2,000) in four installments of Five Hundred Dollars (\$500). If any payment is not received on the due date, the full payment shall then be due and payable immediately.</p>	<p>The first installment is due on the effective date of this Order, the second installment is due on November 30, 2011, the third installment is due on December 31, 2011, and the fourth installment is due on January 31, 2012.</p>
<p>2. Respondents shall properly dispose of the pesticides quarantined by the Department (10 eight ounce bottles of Bonide Captan 50% WP, 4 one pound bottles of Bonide Systemic Granules, 4 thirty-two ounce bottles of Bonide Tickmaster, 18 one quart bottles of Greensweep Weed &amp; Feed 20-0-0, and 1 six ounce can of Fulex Nicotine Fumigator) pursuant to ECL §33-1503. Prior to disposal, Respondents shall contact the Department to arrange for release of the quarantined pesticides.</p>	<p>Within 30 days of the effective date of this order.</p>
<p>3. Respondents shall comply with the Federal Worker Protection Standards (WPS) (40 CFR 170) and submit to the Department documentation showing compliance with the following WPS:</p> <ul style="list-style-type: none"><li>a) 40 CFR 170.122 requires agricultural employers to provide workers with specific information about pesticide applications at the agricultural establishment;</li><li>b) 40 CFR 170.130(a) requires agricultural employers to provide each worker with safety training;</li><li>c) 40 CFR 170.135 requires agricultural employers to display pesticide safety information for workers;</li><li>d) 40 CFR 170.150 requires agricultural employers to provide decontamination supplies for workers; and,</li><li>e) 40 CFR 170.222 requires agricultural employers to post specific information about pesticide applications for workers at the agricultural establishment.</li></ul>	<p>Within 30 days of the effective date of this order.</p>

4.	Respondents shall submit a signed and notarized Compliance Verification Affidavit to the Department certifying that actions necessary to come into compliance with the Department's regulatory program, and those actions specified in this Consent Order, have been completed.	Within 45 days of the effective date of this order.
----	---	---

Any payment required by this order shall be sent to the Department at the following address:

New York State Department of Environmental Conservation  
317 Washington Street  
Watertown, New York 13601-3787  
Attention: Regional Attorney

Any communication or submissions required by this order shall be sent to the Department at the following address:

Robert Freese  
Pesticide Control Specialist I  
Department of Environmental Conservation, Region 6  
317 Washington Street  
Watertown, New York 13601-3787

To: Mr. Gary Rhodes  
Rhodes Greenhouses, Inc.  
P.O. Box 220  
Belleville, New York 13611

**New York State Department of Environmental Conservation**  
**Office of General Counsel, Region 6**  
Dulles State Office Building  
317 Washington Street, Watertown, New York 13601-3787  
Phone: (315) 785-2238 • Fax: (315) 785-2242  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



October 31, 2011

Gary L. Rhodes  
Rhodes Greenhouses, Inc.  
P.O. Box 220  
Belleville, New York 13611

RE: Consent Order # R6-20110722-38

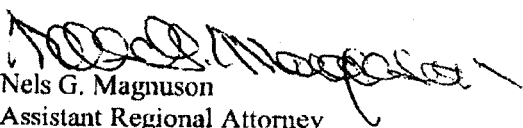
Dear Mr. Rhodes:

Enclosed are a copy of the Consent Order executed on behalf of the Department and a receipt for personal money order #677645 in the amount of \$500. The second installment of the civil penalty payment in the amount of \$500 is due November 30, 2011.

Also enclosed is a Compliance Verification Affidavit. Pursuant to Required Action 4 of Schedule A of the Consent Order, please sign the Affidavit before a notary public and return it to me within 45 days of the date of this letter, after Required Actions 2 and 3 of Schedule A of the Consent Order have been completed.

In the meantime, please contact me if you have any questions. Thank you.

Sincerely,

  
Nels G. Magnuson  
Assistant Regional Attorney  
Region 6

NGM:als

Enclosure

cc : Robert Freese (w/enc.)  
Peter Taylor (w/enc.)  
Ronald J. Novak (w/enc.)

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of Article 33 of the  
Environmental Conservation Law (ECL), Part 325 of  
Title 6 of Codes, Rules and Regulations of the State of  
New York (NYCRR), and Part 170 of Title 40 of Code of  
Federal Regulations (CFR) by:

---

**Rhodes Greenhouses, Inc. and Gary Rhodes**  
Town of Henderson  
Jefferson County

**ORDER ON CONSENT**  
**Case # R6-20110722-38**

Respondents.

---

**WHEREAS:**

**Rhodes Greenhouses, Inc. and Gary Rhodes**, P.O. Box 220, Belleville, New York 13611, having violated Article 33 of the ECL, Part 325 of Title 6 of the NYCRR, and Part 170 of Title 40 of the CFR at Rhodes Greenhouses, Inc., 7185 NYS Route 3, town of Henderson, Jefferson County, New York, at the time and in the manner as stated below, and having waived the right to a hearing on said violations, and after due consideration having been had thereon, it appearing that this order will be advantageous to the state, now therefore,

**IT IS HEREBY ORDERED**, pursuant to the applicable provisions of the ECL and/or Rules and Regulations that:

- I. The amount of Six Thousand One Hundred Dollars (\$6,100) shall be paid to the Department of Environmental Conservation as a penalty for the violations described below. **Four Thousand One Hundred Dollars (\$4,100) of which is hereby suspended provided that Respondents comply with the terms of the attached Schedule A by reason of such violations.**
- II. Respondents shall comply with the terms of the attached Schedule A by reason of such violations. Respondents' failure to comply fully and in a timely fashion with any provision, term, or condition of this order shall constitute a default and a failure to perform an obligation under this order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to Respondents by the Department.
- III. No change in this order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.
- IV. Respondents shall indemnify and hold harmless the Department, the state of New York, and their representatives and employees for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this order by Respondents and their successors (including successors in title) and assigns.
- V. Upon completion of all obligations created in this order, this order settles only all claims for civil and administrative penalties concerning the violations described below against Respondents and their successors (including successors in title) and assigns.

- VI. Nothing contained in this order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or his designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondents.
- VII. The effective date of this order is the date that the Commissioner or his designee signs it.

### CONSENT BY RESPONDENTS

Respondents hereby consent to the issuing and entering of this order, waive their rights to a hearing herein as provided by law, and agree to be bound by the provisions, terms, and conditions contained in this order.

Rhodes Greenhouses, Inc.

By: [Signature]  
Title: Owner  
Date: 24 Oct 2011

### CORPORATE ACKNOWLEDGMENT

STATE OF NEW YORK )  
COUNTY Jefferson ) ss:

On this 24 day of October, 2011, before me personally came Bary L. Rhodes to me known, and who by me being duly sworn, did depose and say that he is the President (owner) of the corporation described in and which executed the foregoing Instrument, and he duly acknowledged to me that he executed the same as authorized by said corporation.

[Signature]  
NOTARY PUBLIC

ROCKETT J. STOCKWELL  
REG. #01ST4863594  
NOTARY PUBLIC, State of New York  
Qualified in Jefferson County  
My Commission Expires 7-21-14

Respondent: Gary Rhodes

By: [Signature]  
[Signature of Respondent]

Date: 24 Oct 2011

INDIVIDUAL ACKNOWLEDGMENT

STATE OF NEW YORK )

COUNTY OF Jefferson ) SS:

On this 24 day of October, 2011, before me, the subscriber, personally came  
Gary L. Rhodes to me known and who by me being duly sworn, did depose and say that he is  
the person described in and who executed the foregoing instrument, and he duly acknowledged to me that he  
signed his name thereto.

[Signature]

NOTARY PUBLIC  
ROCKETT J. STOCKWELL  
REG. #01ST4863594  
NOTARY PUBLIC, State of New York  
Qualified in Jefferson County  
My Commission Expires 7-31-14

Dated: Watertown, New York, Oct 31, 2011

Commissioner Joseph J. Martens,  
New York State Department of Environmental Conservation

By: Judy Drabicki  
Judy Drabicki  
Regional Director  
Region 6

	Description of Violation	CITATION		Date	Location of Violation (Town / County)
		Permit # / Section (if applicable)	Environmental Conservation Law and/or Regulation		
1	Respondent Rhodes Greenhouses, Inc. offered for sale within New York State pesticides (Bonide Captan 50% WP, Bonide Systemic Granules, Bonide Tickmaster, and Greensweep Weed & Feed 20-0-0) which were not registered with the Department.		ECL §33-0701 and §33-1301 (1)(a)	June 29, 2011	Henderson / Jefferson County
2	Respondent Gary Rhodes, who was not a certified pesticide applicator, applied a restricted use fumigant (Fulex Nicotine Fumigator).		6 NYCRR § 325.7(d) (2)(iv)	June 24, 2011	Henderson / Jefferson County
3	Respondent Gary Rhodes used, within New York State, a restricted use pesticide (Fulex Nicotine Fumigator) which was not registered with the Department.		ECL §33-0701 and §33-1301 (1)(a)	June 24, 2011	Henderson / Jefferson County
4	Respondent Gary Rhodes, while using a pesticide under the supervision of a certified private pesticide applicator, did not have in his custody and did not make available for inspection upon request of the Department a legible copy of the label for the pesticide being used.		ECL §33-1301 (1)(b) and 6 NYCRR § 325.2(d)	June 24, 2011	Henderson / Jefferson County
5	Respondents Rhodes Greenhouses, Inc. and Gary Rhodes, while using a pesticide, did not follow the directions on the label by failing to comply with Federal Worker Protection Standards (40 CFR 170), including the following: a) 40 CFR 170.122 requires agricultural employers to provide workers with specific information about pesticide applications at the agricultural establishment;		6 NYCRR § 325.2(b)	June 24, 2011	Henderson / Jefferson County

	<p>specific information about pesticide applications at the agricultural establishment;</p> <p>b) 40 CFR 170.130(a) requires agricultural employers to provide each worker with safety training;</p> <p>c) 40 CFR 170.135 requires agricultural employers to display pesticide safety information for workers;</p> <p>d) 40 CFR 170.150 requires agricultural employers to provide decontamination supplies for workers; and,</p> <p>e) 40 CFR 170.222 requires agricultural employers to post specific information about pesticide applications for workers at the agricultural establishment.</p>				
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**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**Respondents' Names: Rhodes Greenhouses, Inc. and Gary Rhodes**

**No. R6-20110722-38**

**SCHEDULE A**

**To settle violations of the New York State Environmental Conservation Law, the above-referenced Respondent shall, on or before the dates indicated:**

REQUIRED ACTION	DUE DATE
1. Submit civil penalty payment of Two Thousand Dollars (\$2,000) in four installments of Five Hundred Dollars (\$500). If any payment is not received on the due date, the full payment shall then be due and payable immediately.	The first installment is due on the effective date of this Order, the second installment is due on November 30, 2011, the third installment is due on December 31, 2011, and the fourth installment is due on January 31, 2012.
2. Respondents shall properly dispose of the pesticides quarantined by the Department (10 eight ounce bottles of Ecnide Captan 50% WP, 4 one pound bottles of Bonide Systemic Granules, 4 thirty-two ounce bottles of Bonide Tickmaster, 18 one quart bottles of Greensweep Weed & Feed 20-0-0, and 1 six ounce can of Fulex Nicotine Fumigator) pursuant to ECL §33-1503. Prior to disposal, Respondents shall contact the Department to arrange for release of the quarantined pesticides.	Within 30 days of the effective date of this order.
3. Respondents shall comply with the Federal Worker Protection Standards (WPS) (40 CFR 170) and submit to the Department documentation showing compliance with the following WPS: <ul style="list-style-type: none"><li>a) 40 CFR 170.122 requires agricultural employers to provide workers with specific information about pesticide applications at the agricultural establishment;</li><li>b) 40 CFR 170.130(a) requires agricultural employers to provide each worker with safety training;</li><li>c) 40 CFR 170.135 requires agricultural employers to display pesticide safety information for workers;</li><li>d) 40 CFR 170.150 requires agricultural employers to provide decontamination supplies for workers; and,</li><li>e) 40 CFR 170.222 requires agricultural employers to post specific information about pesticide applications for workers at the agricultural establishment.</li></ul>	Within 30 days of the effective date of this order.

4.	Respondents shall submit a signed and notarized Compliance Verification Affidavit to the Department certifying that actions necessary to come into compliance with the Department's regulatory program, and those actions specified in this Consent Order, have been completed.	Within 45 days of the effective date of this order.
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Any payment required by this order shall be sent to the Department at the following address:

New York State Department of Environmental Conservation  
317 Washington Street  
Watertown, New York 13601-3787  
Attention: Regional Attorney

Any communication or submissions required by this order shall be sent to the Department at the following address:

Robert Freese  
Pesticide Control Specialist I  
Department of Environmental Conservation, Region 6  
317 Washington Street  
Watertown, New York 13601-3787

To: Mr. Gary Rhodes  
Rhodes Greenhouses, Inc.  
P.O. Box 220  
Belleville, New York 13611



OCT 17 2011

**New York State Department of Environmental Conservation**  
**Office of General Counsel, Region 6**  
Dulles State Office Building  
317 Washington Street, Watertown, New York 13601-3787  
Phone: (315) 785-2238 • Fax: (315) 785-2242  
Website: [www.dec.ny.gov](http://www.dec.ny.gov)



December 6, 2011

Mr. Gary L. Rhodes  
Rhodes Greenhouses, Inc.  
P.O. Box 220  
Belleville, NY 13611

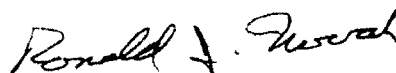
RE: Consent Order #R6-20110722-38

Dear Mr. Rhodes:

This is to acknowledge receipt of cashier's check #825187 in the amount of \$500. A receipt is enclosed for your records. The next installment payment of \$500 is due by December 31, 2011.

Thank you for your cooperation.

Sincerely,



Ronald J. Novak  
Regional Enforcement Coordinator  
Region 6

RJN:als

Enclosure

cc: Robert Freese  
Peter Taylor  
Randy Young  
Elissa Armater

**New York State Department of Environmental Conservation**  
**Office of General Counsel, Region 6**  
**Dulles State Office Building**  
317 Washington Street, Watertown, New York 13601-3787  
**Phone:** (315) 785-2238 • **Fax:** (315) 785-2242  
**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



January 5, 2012

Mr. Gary L. Rhodes  
Rhodes Greenhouses, Inc.  
P.O. Box 220  
Belleville, NY 13611

RE: Consent Order #R6-20110722-38

Dear Mr. Rhodes:

This is to acknowledge receipt of money order #681051 in the amount of \$500. A receipt is enclosed for your records. The next installment payment of \$500 is due by January 31, 2012.

Thank you for your cooperation.

Sincerely,



Ronald J. Novak  
Regional Enforcement Coordinator  
Region 6

RJN:als

Enclosure

cc: Robert Freese  
Peter Taylor  
Randy Young  
Elissa Armater

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of Violations of Article 33 of the  
Environmental Conservation Law ("ECL"), Part 325 of  
Title 6 of Codes, Rules and Regulations of the State of  
New York (NYCRR), and Part 170 of Title 40 of  
Code of Federal regulations by:

**Rhodes Greenhouses, Inc. and Gary Rhodes**  
Town of Henderson  
Jefferson County

Case # R6-20110722-38

Respondents.

**COMPLIANCE VERIFICATION AFFIDAVIT**

Gary Rhodes, being duly sworn did depose and say that I am the President of Rhodes Greenhouses, Inc., and Rhodes Greenhouses, Inc and Gary Rhodes have complied with Required Actions 2 and 3 of Schedule A of the Consent Order dated October 31, 2011.

By: *Gary Rhodes*

Title: *President*

Subscribed and sworn to before me

on this 4 day of November, 2011.

*Rockett J. Stockwell*  
Notary Public

ROCKETT J. STOCKWELL  
REG. #01ST4863594  
NOTARY PUBLIC, State of New York  
Qualified in Jefferson County  
My Commission Expires 1-2-14

**INSPECTION #:** 062411RF201

**FIRM:** Rhodes Greenhouses  
7185 NYS Rte 3  
Henderson, NY 13650

**CONTACT PERSON:** Gary Rhodes, Owner  
(315) 938-5152

**INSPECTION DATE:** June 24, 2011

**DATE OF REPORT:** June 28, 2011

**NARRATIVE:**

On June 24, 2011, I inspected Rhodes Greenhouses in Henderson, NY. The purpose of the inspection was to inspect their use of pesticides to determine if they're in compliance with New York State's pesticide laws and the Worker Protection Standard, title 40, part 170 in the Code of Federal Regulations, (40 CFR 170).

I met with the owner of the facility, Mr. Gary Rhodes. I showed Mr. Rhodes my state credentials and issued him a Notice of Inspection. Mr. Rhodes and his wife Jolene Rhodes own and operate the facility. I explained to him the reason for my inspection and he brought me to his workshop where he stores and mixes his pesticides.

Mr. Rhodes informed me that their facility consists of 30,000 sq. ft. of greenhouses. Their primary crop is bedding plants. They employ one full time worker besides themselves and usually have about three part time workers.

I asked him for his application records and Mr. Rhodes pulled out a file. He had the records for the past three years and on them he recorded only the applications of restricted use pesticides. There were only three applications recorded so far for 2011. I recorded the information for the last application made onto the Use Inspection form. Mr. Rhodes applied two cans of Fulex Nicotine Fumigator inside his greenhouse referred to as the North House. This is a skull and crossbones pesticide product with the signal word Danger.

I asked Mr. Rhodes how big the North House is and he stated that it is 30' x 48'. I then asked to see the pesticide label for the product to determine if he used it according to label directions. Mr. Rhodes was only able to produce an unused can with the label attached. I read the label directions and it stated, "Refer to the sheet entitled "Supplemental Labeling or Fulex Nicotine Fumigator" for complete instructions for worker protection, use and reentry." I asked Mr. Rhodes for the supplemental labeling and he wasn't able to produce it. Mr. Rhodes stated that he never received the supplemental labeling from his supplier. Part 325.2(d) of 6 NYCRR,

requires the applicator to have a copy of the label for each pesticide being used and must make it available for inspection upon request of the department.

I then asked Mr. Rhodes if he was certified to apply restricted use pesticides. Mr. Rhodes stated he was not and that he works under his wife's supervision. He provided me with his wife's certification card. Mrs. Jolene Rhodes is a certified private applicator in category 24. Her certification number is P6839805 and it expires on April 21, 2016. She originally became certified in 2006. Mr. Rhodes was once certified, from 1984 to 1990. Mr. Rhode's use of the fumigant, Fulex Nicotine Fumigator, was in violation of Part 325.7(d)(2)(iv).

Mr. Rhodes did not have copies of any of the pesticide labels. I asked him for a copy of another product he uses, M-Pede, EPA # 62719-515, and Mr. Rhodes could only produce the bottle. I inspected the bottle and the label was attached but could not be read. The label was covered in a dark oily substance making it illegible. Not having copies of the pesticide labels is a violation of Part 325.2(d) of 6 NYCRR. Also using a product with an unreadable label could be considered a violation of ECL 33-1301.1(b).

## **Worker Protection Standard Inspection**

### ***Information at a Central Location***

Rhode's Greenhouses did not have an official central location. There was no safety poster, application information, or emergency medical information displayed anywhere as required by title 40, part 170, section 122 and 135 in the Code of Federal Regulations (40 CFR 170.122 and 170.135).

### ***Pesticide Exposure Incidents/Emergency Assistance***

According to Mr. Rhodes, there have never been any incidents of exposure or emergency assistance. If there were, he says his employees would contact him and if he wasn't present they could call his cell phone or go to the main store located on the premises and have someone there drive them to the hospital. The WPS requires the employer to provide information regarding the pesticide used to medical personnel and during this inspection Mr. Rhodes was not able to produce copies of the pesticide labels. Therefore, had there been an incident, Mr. Rhodes would not have been able to comply with 40 CFR 170.160.

### ***Pesticide Safety Training Assurance***

Mr. Rhodes admitted that safety training has not been provided to his workers within the last five years as required by 40 CFR 170.130. Mr. Rhodes is the only handler at the facility and he also admitted that he was not trained as required by 40 CFR 170.230. However, since he is the owner of the facility he is exempt from providing himself training.

### ***Pesticide Safety Training Program***

Mr. Rhodes did not possess any safety training materials and admitted to not training any of his workers. He is required to train any worker who is not an immediate family member.

#### ***Decontamination Sites***

Mr. Rhodes didn't have a designated decontamination site but he did have a double sink at his work bench and nearby was a bathroom that he said would be his decontamination site for his workers. I inspected the bathroom and did not find any soap or single use towels as required by 40 CFR 170.150. He was also missing an emergency eye wash for himself but is again exempt from this requirement as the owner of the facility. Mr. Rhodes uses his home next door to clean up after applications.

#### ***Restrictions During Applications and Notice of Applications to Workers***

The facility appears to be in compliance with 40 CFR 170.110 and 170.120. Mr. Rhodes prevents workers from entering treated areas during application and until REIs expire by notifying workers orally and thru posting of WPS warning signs. He also barricades the entrances. Mr. Rhodes stated that no early entry activities take place.

#### ***Additional Duties for Handler Employers***

Mr. Rhodes did not have access to product labeling during handling activities as required by 40 CFR 170.232. One such label would be the one for Fulex Nicotine Fumigator, EPA # 1327-41. The missing supplemental labeling provides application directions, pre-application instructions, use restrictions, personal protective equipment, and the agricultural use requirements. Mr. Rhodes stated that he's familiar with how to use the product because he's been using it for years.

#### ***Personal Protective Equipment Requirements for Handlers/Early Entry Workers***

Mr. Rhodes is the only handler at the facility and there are no early entry workers according to him. I did not inspect Mr. Rhodes's personal protective equipment. I just asked the questions on the inspection form. Pesticide product labels were not available for inspection to record the required personal protective equipment on the inspection form. No violations were observed in regards to PPE.

#### ***Worker Interview***

After conducting the employer/handler interview with Mr. Gary Rhodes, I interviewed their one full time employee, Luanne. Mr. Rhodes left and was not present for the interview. Luanne confirmed a lot of the information I had already received from Gary. She stated that she hasn't been trained on safety in a long time, at least more than five years. She also stated that prior to today she did not know where Gary kept his application records. I asked her if Gary notifies her about his pesticide use and she confirmed that he does provide her with oral warnings and thru posting signs.

I asked Luanne how many employees work in the greenhouses. Luanne stated that it's usually Gary, Jolene, and herself but that they hire three part time employees in the spring, usually high school kids. She also stated that other family members help out from time to time. I saw Mr. Rhodes's son and niece working in the greenhouses during my inspections.

### **Follow up Inspection**

After returning to my office on June 24<sup>th</sup>, I checked the registration status of the pesticide products Mr. Rhodes was using in his greenhouses. The one product I recorded during the agricultural use observation inspection, Fulex Nicotine Fumigator, EPA # 1327-41, was found to be unregistered. Using an unregistered pesticide is a violation of ECL 33-1301.1(a). I documented that he used it on March 5, 2011. A copy of the product's label, supplemental label, and registration information from Cornell's PIMS website will be included with this report as Attachment # 1.

On June 27<sup>th</sup>, 2011, I contacted Mr. Rhodes by telephone and informed him that this product was not registered for use. After some discussion about how to dispose of the product, he asked if he could hold onto it until the next Clean Sweep event. I told him he could dispose of his unregistered and unwanted agricultural pesticides at the next event but that I would need to quarantine the material to ensure that none of it disappears between now and then.

On June 29, 2011, I returned to Rhode's Greenhouses to quarantine any unregistered products that he has. I brought my laptop computer so that we could go thru his inventory. I issued Mr. Rhodes a Notice of Inspection and showed him my state credentials. We then went back to his workshop and emptied out his cabinet where he keeps the pesticides that are used within the greenhouses.

I quarantined eight different pesticide products from his cabinet. There were sixteen containers quarantined and one other container of a registered product that Mr. Rhodes wanted to dispose of. Most of the quarantined products were found to be unregistered, one product was found in a mason jar and a bag with no labeling, and two other products were found to be misbranded. The unlabeled containers were marked "Benlate". These could be considered a violation of ECL 33-1301.1(b) if I knew he had used them. Mr. Rhodes stated that he never used it but was holding on to them for sentimental reasons because they belonged to his deceased father. All the products were placed in a cardboard box and taped up with a red quarantine notice on top of the box.

### **Market Place Inspection**

On June 29, 2011, I also conducted a Market Place Inspection at Rhodes' Greenhouses. They were offering for sale a number of general use lawn and garden products. The products were found on shelves next to the checkout counter. Using my laptop, I checked the registration status of these products and found that four of them were unregistered for sale, **a violation of ECL 33-1301.1(a)**. Copies of the four products registration information from Cornell's PIMS website will be included in this report as Attachment #s 2-5. I quarantined the following products:

Product Name	EPA Number	Suspension Date*	Quantity
Bonide Captan 50% WP	66330-27-4	03/31/11	10 (8 oz bottles)
Bonide Systemic Granules	4-153	03/31/11	4 (1 lb bottles)
Bonide Tickmaster	4-407	03/31/09	4 (32 oz bottles)
Greensweep Weed & Feed 20-0-0	239-2640	12/31/06	18 (1 qt bottles)

### Summary

Rhodes' Greenhouses was found to be in violation of a number of state and federal laws concerning their use of pesticides and the Worker Protection Standard. A Notice of Violation will be mailed to Mr. Gary Rhodes and a copy of this case file will be forwarded to Region 6's Office of General Counsel for further enforcement action. Below is a list of the violations observed during the two inspections on June 24<sup>th</sup> and 29<sup>th</sup> of 2011. All of the WPS violations can also be considered violations of Part 325.2(b) of 6 NYCRR. These violations will be included in the Notice of Violation sent to Mr. Rhodes.

**On June 29th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Rhodes' Greenhouses, was offering for sale four different unregistered pesticide products, a violation of Sections 33-0701 and 33-1301.1(a) of the ECL.**

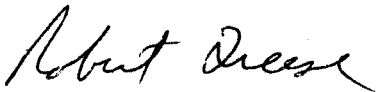
**On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, applied a federally restricted fumigant without the necessary pesticide applicator certification, a violation of Part 325.7(d)(2)(iv) of 6 NYCRR.**

**On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, applied an unregistered pesticide product, a violation of Sections 33-0701 and 33-1301.1(a) of the ECL.**

**On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, didn't have copies of the labels for each pesticide being used during their use or upon request by the department, a violation of Part 325.2(d) of 6 NYCRR.**

**On June 24th, 2011 in the town of Henderson, Jefferson County, State of New York, it was discovered that Mr. Gary Rhodes, owner of Rhodes' Greenhouses, didn't follow label directions, a violation of Part 325.2(a) of 6 NYCRR, in that he didn't comply with the Worker Protection Standard, 40 CFR part 170, as required by the Agricultural Use Requirements section on the pesticide's label. More specifically, Rhodes' Greenhouses was found to be in violation of the following sections of 40 CFR part 170:**

1. 40 CFR 170.130 requires that all workers must receive pesticide safety training using United States Environmental Protection Agency approved training materials. This training must also be documented.
2. 40 CFR 170.122 requires that specific information on pesticide applications, in the form of written application records be provided at the central location and be available to workers and handlers. Specific information on all pesticide applications, including location of application, product name, EPA registration number, active ingredients, time and date of application, and restricted entry intervals (REI) for each pesticide applied within the past thirty (30) days, must be provided for both general and restricted use products.
3. 40 CFR 170.135 requires employers of agricultural workers and handlers to display a pesticide safety poster in a location designated as the central posting area. This poster must also contain information on emergency medical contacts.
4. 40 CFR 170.150 requires that decontamination sites be provided for workers within 1/4 mile of the work site and for 30 days following the expiration of the REI. Worker sites must have soap, single use towels, and enough water for washing and emergency eye flushing. In addition to these items, handler sites must have enough water for washing entire body in case of an emergency and one clean change of clothing.



Robert Freese  
PCS-I, Region 6

**INSPECTION #:** 062411RF201  
062911RF201  
101911RF201

**FIRM:** Rhodes Greenhouses  
7185 NYS Rte 3  
Henderson, NY 13650

**MAILING ADDRESS:** PO Box 220  
Belleville, NY 13611

**CONTACT PERSON:** Gary Rhodes, Owner  
(315) 938-5152

**DATE OF INITIAL  
REPORT:** June 28, 2011

**DATE OF ADDENDUM:** October 20, 2011

**ADDENDUM:**

On October 20, 2011, I returned to Rhodes Greenhouses with Mr. Nels Magnuson, Senior Attorney, for a meeting with Gary Rhodes regarding the Department's proposed consent order and to possibly issue a quarantine release. Mr. Rhodes had contacted me via email stating that he wished to dispose of the quarantined pesticides from the June 29, 2011 inspection.

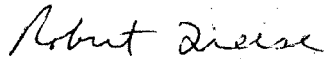
We started the meeting by discussing Mr. Rhode's plan to dispose of the quarantined materials. Mr. Rhodes presented me with a proposal from Safety-Kleen in Syracuse, NY. The proposal was for the pickup and delivery of the waste to an authorized disposal facility. Mr. Magnuson and I agreed to issue the quarantine release if Mr. Rhodes agreed to sign the proposal and provide us with a copy, which he did, Sample # 116008(1).

I then inspected the quarantined material and found the quarantine to be intact. At the request of Mr. Magnuson, I took ten photographs of the four quarantined products that Mr. Rhodes had been offering for sale. I took pictures of the front side and back side of each product's label, Sample # 116008(2).

I then issued Mr. Rhodes two Quarantine Release forms for all of the products that had been quarantined on June 29, 2011. I instructed Mr. Rhodes to provide me with documentation from Safety-Kleen showing that they did come and pick up the material. Mr. Rhodes agreed to do this.

Mr. Magnuson and Mr. Rhodes then discussed the proposed Consent Order. Mr. Magnuson explained to Mr. Rhodes what his options were and then the two of them came to an

agreement on a new proposed Consent Order. I made sure Mr. Rhodes had copies of all the inspection forms, thanked him for his cooperation, and then we left. No further action will be taken at this time.

A handwritten signature in cursive script that reads "Robert Freese".

Robert Freese  
PCS-I, Region 6